

JUDICIAL INTERPRETATION

OF

INDIAN STATUTES

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—BY—

KALINDI PRASAD B. A.,

Vakil High Court of Judicature, N.-W. P., Allahabad.



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To
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THIS BOOK
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E. L. E. Encyclopædia of the Laws of England.
S. J. D. Stroud's Judicial Dictionary.
T. L. D. Tomlin's Law Dictionary.
W. L. L. Wharton's Law Lexicon.
W. G. Wilson's Glossary.

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JUDICIAL INTERPRETATION

OF

INDIAN STATUTES

Abandon—"The word 'abandon' is one in ordinary and common use and in its natural sense well understood, but there is not a word in the English language used in a more highly artificial and technical sense than the word 'abandon'"—*per* Martin B. in *Rankin v. Potter*, 42 L. J. C. P. 200: L. R. 6 H. L. 189.

Abandonment—As applied to easements means generally the voluntary and permanent relinquishment by the dominant owner of a right which he has actually acquired—*per* Garth C. J., in *Sham Churn Auddy v. Tarney Churn Banerji*, I. L. R. 1 Cal. at p. 429.

Abate—The word 'abate' is both an English and a French word, and signifies in its proper sense, to *diminish* or *take away*—S. J. D.; "it does not mean 'dismissed'"—*per* Westropp C. J., in *Ibrahim bin Mohsin v. Abdulrahman bin Alli*, 12 Bom. H. C. Rep. at p. 259.

To abate a nuisance—is to destroy, remove or put an end to it—T. L. D.

"The law of abatement as stated in the Civil Procedure Code and elucidated in the illustration to S. 361 is the same as it is in England. Indeed the case given in illustration (c) is founded on the maxim '*actio personalis moritur cum persona*'"—*per* Sale J. in *Chand Giri v. Bhayaram Pandey*, I. L. R. 22 Cal. at p. 98.

The *plea in abatement* is a plea put in by the defendant in which he shows cause to the court why he should not be impleaded or sued; or if impleaded, not in the manner and form he then is; therefore praying that the writ or plaint may *abate*; that is the suit of the plaintiff may for that time cease—T. L. D.

Abatement of criminal proceedings—means their termination without any decision on the merits and without the assent of the prosecutor—E. L. E. Vol. I.

To abate a castle or fort—is to beat it down—T. L. D.

Abdication—In general, it is used where a magistrate or a person in office renounces and gives up the same before the term of service is expired. This word is frequently confounded with 'resignation,' but differs from it in that *abdication* is done purely and simply; whereas *resignation* is in favour of some other person—*T. L. D.*

Abduction—Defined in *Act 45 of 1860, S. 362*; a term originally used with reference to the taking of a person not *sui juris*, out of the possession or custody of husband, parent, or legal guardian—Abduction of woman was common during the Middle Ages, being regarded as gallantry rather than crime—*E. L. E.*

Abet—Defined in *Act 45, of 1860, S. 362*; *Bom. Act 3, 1886, S. 3 (15)*; *Mad. Act 1, 1894, S. 3 (1)*; *N. & O. Act 1, 1887, S. 2 (9)*.

Abetment—Defined, *Act 45, 1860, S. 108*.

Abettor—Defined, *Act 45, 1860, S. 108*.

"To constitute an aid or abettor some active steps must be taken by word or action with intent to instigate the principal or principals. Encouragement does not of necessity amount to aiding or abetting. It may be intentional or unintentional. A man may unwillingly encourage another in fact by his presence, by misinterpreted words or gestures, or by his silence or non-interference; or he may encourage intentionally by expressions, gestures or actions intended to specify approval. In the latter case he aids and abets, in the former he does not"—*per Hawkins J, R. v. Coney, 51, L. J. M. C. 78*.

Abkari—Revenue derived from duties levied on the manufacture and sale of inebriating liquors, as *tari* or *toddy*, *pachwai arrack* &c., and on intoxicating drugs whether in substance, infusion, or extract, as *opium bhang*, *charas* &c. In some parts of the South of India the *Abkari* included duties on eating-shops gaming-houses, itinerant tumblers, jugglers and the like. The principal Regulations in Bengal for the *Abkari* duties are 27 of 1793, 10 of 1813, 13 of 1816 & 7 of 1824—*W. G.*

Abkari Inspector—Defined, *Mad. Act 1 of 1886, S. 3 (5)*

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Abkari Officer—Defined, *Bom. Act 5, 1878, S. 3 (2); Mad. Act 1 of 1886, S. 3 (2)*. See also "Excise Officer."

Abkari Revenue—Defined, *Bom. Act 5 of 1878, S. 3 (1); Mad. Act 1 of 1886, S. 3 (1)*.

Abode—"A man's residence where he lives with his family and sleeps at night is always his place of abode in the full sense of that expression"—*per* Lord Camppbell C. J. in *R. v. Hammond*, 1852, 17 Q. B. 772: 21 L. J. Q. B. 153.

"There is no strict or definite rule for ascertaining what is inhabitance or residence. The words have nearly the same meaning. Sleeping once or twice in a place would not constitute inhabitance. There is no precise line to be drawn. It is always, if the inhabiting is *bona fide*, a question of more or less. The question is whether there has been such a degree of inhabitance as to be in substance and common sense a residence"—*per* Blackburn J. in *R. v. Mayor of Exeter Wescombs case* (1868) L. R. 4 Q. B., 110; SEE ALSO "*Reside*".

Abscond—The term 'abscond' is not to be understood as implying necessarily that a person leaves the place in which he is. Its etymological and its ordinary sense are to *hide one self*; and it matters not whether a person departs from a place or remains in it if he conceals himself; nor does the term apply only to the commencement of the concealment—*per* Turner C. J. in *Srinivas Ayyanger v. the Queen* I. L. R. 14 Mad. at p. 397.

Absolute occupancy tenant—Defined, *Act 18 of 1881, S. 4 (16); Act 9 of 1883, S. 36*.

Abwab—Miscellaneous cesses, imposts, and charges levied by zemindars and public officers. These cesses were either abolished or consolidated with the land revenue, and are no longer payable to the British Government; but such as it existed before the perpetual settlement and were not specially abrogated or not consolidated are still claimed sometimes by the zemindars—W. G., (SEE *Reg. 8, 1793; 30, 1803 and 5, of 1812*). See also *Chulton Mahton v. Tilakdhari*, I. L. R. 11 Cal. 175.

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Acceptance—The taking and accepting of anything in good part, and as it were a tacit agreement to a preceding act which might have been defeated and avoided were it not for such acceptance had—*T. L. D.*; *W. L. L.*; SEE “Qualified acceptance.”

Accepting in S. 61 of the Stamp Act I of 1879 “does not mean ‘receiving’ but executing as an acceptor”—*per* Aikman J. in *Q. E. v. Nihal Chand*, *I. L. R.* 20 *All.* 441; *per* Turner C. J. in *Q. E. v. Gulam Husain Sahib*, *I. L. R.* 7 *Mad.* at p. 73; *Flowden J. Piuri Lal v. Q. E.*, *P. R.* 1891 No. 11; SEE ALSO *Empress v. Sikishen Das*, *P. R.* 1887, No. 12 *Cr.*

Acceptor, Defined, *Act* 26, 1881, S. 7.

Acceptor for honour, Defined, *Act* 26 of 1881, S. 7
(*a. m. Act* 2, 1885, S. 2.)

Accessory—A term derived from scholastic logic and used in law to discriminate certain classes of accomplices from principal felons. *Accessory before the fact*, is a person who abets, counsels, incites, moves, procures, hires or commands; and an *accessory after the fact*, is a person who with knowledge or notice after the commission of a felony harbours, receives, relieves, comforts, assists, or maintains any person whom he knows to have been concerned in its commission—*E. L. E. Vol. I.*

Accessory License, Defined, *Act* 5, 1882, S. 55.

Accessory Right, Defined, *Act* 5, 1882, S. 24.

Accident—The word “accident” is *constantly* used in ordinary English and therefore in law in two senses, one much wider than the other. Strictly an occurrence can only be said to be accidental when*it is done neither to design nor to negligence. For if an act be intentional it is clearly no accident; if it be the result of culpable negligence then by due care it could have been avoided, and the negligent person cannot be allowed to excuse himself by declaiming it an accident. In the narrower sense of the word an accident must be nobody’s fault—*E. L. E.*

Accomplice—One concerned with another or others in the commission of a crime—*W. L. L.*

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There is no legal definition of the word "accomplice" as used in cl. (b), S. 114 of the Indian evidence Act I of 1872, but the observations in the Full Bench case of *Q. E. v. O' Hara*, (1. L. R. 17 Cal. 642) would seem to imply that he must be either *particeps criminis*, or at least a person who could be put on his trial as an abettor within the meaning of S. 107 of the Indian Penal Code.

Accord—An agreement between two persons one of whom has a right of action against the other that the latter should do or give, and the former accept something in satisfaction of the right or action. When the agreement is executed and satisfaction has been made it is called accord and satisfaction—*W. L. L.*

Account—A registry of debts, credits, and charges, or a detailed statement of a series of receipts (credits) and disbursements (debits) of money, which have taken place between two or more persons. Accounts are either (1) *open*, when the balance is not struck, or it is not accepted by all the parties, or (2) *stated*, or (3) *settled*—*W. L. L.*

Account stated—is an admission of money being due from one party to another for which a promise to pay the amount is implied in law. In order to constitute an *account stated* there must be a statement of some certain amount of money being due which statement must be made by the debtor or his agent either to his creditor himself or to some agent of his—*E. L. E.*

"In common talk an *account stated* is treated as an admission of a debt due from the defendant to the plaintiff; but there is also a real account stated which is equivalent to what is called *insimul computaverunt*, when several items of claim are brought into account on either side and being set against one another, a balance is struck and the consideration for the payment of the balance is the discharge on each side"—*per* L. Blackburn, *Laycock v. Pickels*—33 L. J., Q. B., p. 47.

The striking of a balance in an account, the items of which are all on one side, does not amount to an *account stated* in the proper sense of the term as used in Art 64, sch. II of the Limitation Act 15 of 1877—*per* Mahmood and Blair JJ. in

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Jamin v. Nand Lal, I. L. R. 15 All., p. 1; *per West j.* in *Nahnibai v. Nathu Bhau*, I. L. R. 7 Bom. 414; *per Sargent C. J.* in *Tirbhawan Gangaram v. Amina*, I. L. R. 9 Bom. 516; *per Spankie A. J.*, *C. Jawahir Singh v. Lachman Das*, *Oudh Cases*, Vol. III at p. 201.

Accountant—Defined, *Reg. I*, 1894, S. 10 (j); see “Public Account”.

Accretion—The term “accretion” is usually applied to the gradual and imperceptible accumulation of land out of the sea or a river. Accretion of land is of two kinds: by alluvion or by dereliction—*W. L. L.* See “Alluvion.”

Accruing costs—Expenses incurred after judgment—*W. L. L.*

Accumulative judgment—If a person already under sentence for a crime be convicted of another offence, the court is empowered to pass a second sentence, to commence after the expiration of the first—*W. L. L.*

Accused—“Means a person over whom the Magistrate or other Court is exercising Jurisdiction.”—*per Ghose and Rampini jj.*, *Jojha Singh*, v. *Q. E.*, I. L. R. 23 Cal., 493; *per Jardine and Telang jj.* in *Q. E. v. Muna Puna*, I. L. R., 16 Bom., 661; *per Banerji j.* in *Q. E. v. Mutsadi Lal*, I. L. R. 21 All. pp. 108, 109; in S. 342 of Act 5 of 1898, must mean “the accused then under trial and under examination by the court”—*per Candy j.* in *Empress v. Durant*, I. L. R. 23 Bom. at p. 219; “in S. 340 of the Code of Criminal Procedure (Act 5 of 1898) applies to a person who is liable under S. 123 of the code to imprisonment in default of giving security”—*per Prinsep j.* in *Nakhi Lal Jha v. Q. E.*, I. L. R., 27 Cal. at p. 658.

Accused person, Defined, 33-4 V. C. 52, S. 26.

Acquiescence—If a person having a right and seeing another person about to commit or in the course of committing an act infringing upon that right stands by in such a manner as really to induce the person committing the act and who might otherwise have abstained from it, to believe, that he assents to its being committed, he cannot afterwards be heard to com-

plain of the act. This, as Lord Cotton has said in *Duke of Leeds v. Earl Amherst* (2 pp. 117, 123), is the proper sense of the term 'acquiescence,' and in that sense may be defined as quiescence under such circumstances as that assent may reasonably be inferred from it and is no more than an instance of estoppel by words or conduct"—*per* Theisiger L. J. in *DeBussche v. All.* 8 Ch. D. p. 314; This word does not mean simply an active intelligent consent, but will be implied if a person is content not to oppose irregular acts which he knows are being done, —*per* Cairns L. C. in *Evans v. Smallcombe*, 37 L. J. Ch. 793.

Acquiescence is the common element in a somewhat indefinite group of equitable estoppels, constituted by the fact that the person entitled has, as it is said, slept over his rights, and by his conduct at the time of a breach of them or subsequently thereto has, with full knowledge both of his own rights and of the acts which infringe them, led the person responsible for the infringement to believe, that he has waived or abandoned his rights. The terms "laches," "acquiescence," "standing by" and "delay" are frequently associated together and they do not appear to be capable of distinct definition—*E. L. E.*

"The principle upon which the doctrine of acquiescence is based is, that a man who acts in such a way as would make it fraudulent for him to set up his legal rights will be deprived of those rights. But where his acquiescence or other conduct does not amount to a fraud, actual or constructive, he cannot be deprived of his rights. The elements or requisites necessary to constitute fraud of that description were laid down by Fry J. in *Willmot v. Barber* (L. R. 15 Ch. D. 96) in the following terms:—'In the first place the plaintiff must have made a mistake as to his legal rights; secondly the plaintiff must have expended some money or must have done some act on the faith of his mistaken belief; thirdly, the defendant, the possessor of the legal right must know of the existence of his own right which is inconsistent with the right claimed by the plaintiff; fourthly, the defendant, the possessor of the legal right, must know of the plaintiff's mistaken belief of his rights. If he does not, there is nothing

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which calls upon him to assert his own rights; *lastly* the defendant, the possessor of the legal right must have encouraged the plaintiff in his expenditure of money or in the other acts which he had done either directly or by abstaining from asserting his legal right. Where all these elements exist, there is fraud of such a nature as will entitle the court to restrain the possessor of the legal right from exercising it, but in my judgment nothing short will do'—*per* Banerji j., *Nannihal Bhagat v. Rameshar Bhagat*, I. L. R. 16 *Al.* at p. 331.

Acquisition—As used in S. 23 of the Land Acquisition Act I of 1894, includes the purpose for which the land is taken as well as the actual taking—*per* Macpherson and Wilkins jj. in *Collec'or of Dinagepur v. Girja Nath Roy*, I. L. R. 25 *Cal.* 346.

Acquittal—Defined, *Act 10 of 1882, and Act 5 of 1898 S. 403 Explanation.*

Acquittance—A release or written discharge of a sum of money or debt due—*E. L. E.*; *T. L. D.*

Act—Defined, *Act 45, 1860, S. 33*; *Act 10, 1897, S. 3 (2)*; see also Bengal Act, Bombay Act, Madras Act, N.-W. P. Act and Oudh Act—see *Fuzle Ali petitioner*, 19 *W. R. p. 8 (Cr. R)*

An act, as I understand it, is an event regarded as under human control. There are few (if any) events which can be said to be wholly within human control. There are, on the other hand, few events by which man is in any way affected, the results of which might not have been changed had his conduct been different. Few events therefore can strictly speaking, be said to be either altogether dependent on, or altogether independent of human control. But many events are regarded by the law as under human control, and I know of no reason why they should be so regarded except that the legal result of them depends in some measure upon the conduct of the party who has exercised control over them—*Markby's Elements of Law pp. 115, 116 (3rd edition).*

As used in S. 363 of Bengal Municipal Act (III B. C. of 1884) refers to tortious act and not to any act arising upon a

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contractual or quasi contractual basis—see *Ambica Charan Mozumdar Chairman Faridpur Municipality v. Satish Chunder Sen*, C. W. N. Vol. II at p. 691.

Act of God—"In the older simpler days, I have myself never had any doubt, that this phrase does mean Act of God in the Biblical sense of the term under which every thing almost is said to be the Act of God; but that in a mercantile sense it means an extraordinary circumstance which could not be foreseen and which could not be guarded against"—per Esher M. R. in *Pandorf v. Hamilton*, 55 L. J. Q. B. 548; 17 Q. B. D. 675; see also *N. Nitrophosphate Co. v. L & S. Katherine's Dock Co.* 9 Ch. D. 503; *R. v. Essex Commissioners of Sewers*, 14, Q. B. D. 561; 11 App. Cas. 449.

Act of trespass—Defined, Act 15, 1882. S. 46.

Act alleged to be in pursuance of any enactment—in Art. 2, Sch. ii of the Limitation Act "must be reasonably construed and that the person who seeks to take advantage of the shorter period of limitation must show that he had reasonable grounds for justifying his action under the particular enactment which he then relied upon, and not simply that he arbitrarily asserted or thought so. He must, in short, in my opinion, have assumed to act in the honest exercise of a supposed statutory power"—per Rattigan J, in *Ganesh Das v. C. T. Elliot*, P. R. 1881, No. 124 at p. 307.

Act illegally and with material irregularity—The clause (in S. 622, Civil Procedure Code) is evidently intended to authorize the High Court to interfere and correct gross and palpable errors of subordinate courts, so as to prevent gross injustice in non-appellable cases; and it seems advisedly to have been expressed in indefinite language from the difficulty of defining exactly the classes of cases which may stand in need of such extraordinary interference. The question whether any case comes under the clause has, in our opinion, to be determined with reference to the grossness and palpableness of the error complained of, and to the gravity of the injustice resulting from it—per Banerjee

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and Gordon JJ. in *Mohant Bhagwan Ramanuj Das, v. Khetter Moni Dassi*, C. W. N. Vol. I. at p. 626; see also, *Mathura Nath Sirkar v. Umesh Chandra Sircar* *Ibi.* p. 626 and *Raghunath Gujrati v. Roy Chattarpot Singh*, *Ibi.* p. 633; according to Straight J. (Tyrrel J. concurring), clauses (a) and (b) of S. 584, Civil Procedure Code, embody what S. 622 refers to in the word "illegality" and cl. (c) indicates the meaning of the words material irregularity in that section—See *Badami Kuar v. Dinu Rai* I. L. R. 8 All. at pp. 114 and 115, (F. B.); contemplates the case of a decision being perverse decision on a question of law or procedure, a decision being perverse when it is conscious departure from some rule of law or procedure"—per Collins C. J., *Mathu Sami Ayyar and Shepherd JJ., in Kustamma Naidu. v. Chappa Naidu* I. L. R. 17 Madras 410.

Action—Defined, 23-4 V. c. 63, S. 5; 24 V. c. 11, S. 4.

This is a generic term and means a litigation in a Civil Court for the recovery of individual right or redress of individual wrong, inclusive, in its proper legal sense, of suits by the crown—*Bradlaugh v. Clarke*, 8 App. Cas, 354; as used in S. 11 of Act 14 of 1859 must be taken to be synonymous with the word 'suit'—per Mitter and Norris JJ., in *Jagmohan Mahto v. Lachmeshar Singh*, I. L. R. 10 Cal. at p. 756, as used in S. 14 means any proceeding instituted in a Court of Justice, See *Hurro Chander Roy Chawdhari v. Shorodheni Debia*, 9 W. R. 402.

Actionable claim—Defined Act, 2 of 1900, S. 3; cf. the definition given in S. 130 of Act 4 of 1882. Act 2 of 1900 now sets at rest the difference between the several High Courts in their interpretation of the term in connection with a mortgage. For the difference as it stood before the passing of this Act, See *Shib Lal v. Azmatullah*, I. L. R. 18 All. at p. 267, F. B.; *Muchiram Basik v. Ishan Chander*, I. L. R. 21 Cal. pp. 568 792 and *Ratnasami v. Subramanya*, I. L. R. 11 Mad. 56.

Actual—The word "actual" does not usually advance the meaning. Speaking generally, a thing is not more itself because it is

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spoken of as "actual," nor is an act more done or enjoined because it is said or required to be "actually" done. But where a word has a constructive legal meaning not completely corresponding to the fact it indicates, then the addition of "actual" will intensify that word so that it will not be fully satisfied by such legal meaning—*S. J. D.*

Actual inventor—Defined, *Act 5 of 1888, S. 4 (5).*

Actual possession—in *S. 318 of the Criminal Procedure Code (Act 25 of 1861)* means "the possession of a master by his servant, the possession of a landlord by his immediate tenant, the person who pays rent to him; the possession of the person who has the property in the land by the usufructuary" *per Sir Richard Couch C. J., In the matter of the petition of J. D. Sutherland, 9 B. L. R. 229; in Art. 10, sch. ii., Act 9 of 1871, "means personal and immediate enjoyment of profits"—per Stuart C. J., in Jagesher Singh v. Jawahir Singh, I. L. R., 1 All. at p. 313; not necessarily, per Pearson, Turner, Spankie and Oldfield JJ. Ibid.; per Barkley and Burney JJ. in Ram Saran v. Hirde and others, P. R., 1883, No. 65; "the thing to be 'actually possessed' is the right of acting as a proprietor"—per Thornton J. in P. R. 1879, No. 160. This controversy has now been set at rest by substitution of the words "physical possession" for "actual possession" in the present Act—See "Possession"*

Actual produce—Defined, *Beng. Regulation 1, of 1801, S. 8.*

Actual proprietor of land—Defined, *Beng. Regulation 27 of 1795, S. 10.*

Actual receipt and enjoyment of rent—(as used in the second part of *S. 77 of Act 10 of 1859*), *See Huronath Roy v. Prannath Roy, 7. W. R., 85.*

Actually employed—Defined, *Act 15, 1881, S. 10 (2) (a. m. Act II, 1891, S. 10.)*

Add—As used in *S. 76, (cl.) (b) of Beng Act.. 2 of 1882, See Goverdhan Singh, v. Q. E., I. L. R. 11 Cal. 570.*

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Addition—Defined, *Act 3, 1877, S. 3.*

As understood in the English Law, it is a title given to a man besides his Christian and surname, setting forth his estate degree, trade &c.; of estate, as yeoman, gentleman, esquire &c., of degree, as knight, earl, marquis, duke &c., of trade, as merchant clothier, carpenter &c. There are likewise additions of place of residence as London, York, Bristol &c.—*T. L. D.*

Ademption—Defined, *Act 10, 1865, S. 139.*

Aden—Defined, *Regulation 2, 1891, S. 2.*

Adjacent soil—See "Subjacent And adjacent soil."

Adjoining holding—Defined, *Beng. Act 3, 1884 S. 6 (3), Explanation.*

Administrator—Defined, *Act 10, 1865, S. 3; Act 5, 1881, S. 3; See also "Official Administrator."*

Administrator general—Defined, *Act 2, 1874, S. 68 (4) (ad Act 2, 1890, S. 15).*

Admiralty—Defined, *52-3 V. c. 63, S. 12 (4).*

Admiralty of Vice-admiralty cause—Defined, *Act 16, 1891, S. 3.*

Admission—Defined, *Act 1, 1872, S. 17; in section 70 of the Evidence Act (1 of 1872) relates only to the admission of a party in the course of the trial of a suit, and not to the attestation of a document by the admission of the party executing it—per Ghose and Stevens JJ. in Abdul Karim v. Suleman, I. L. R. 27 Cal. at p. 193; see "Confession."*

Admitted set off—The expression as used in Presidency S. C. C. Act (14 of 1882), *S. 18, Explanation I*, means, set off admitted before the institution of the suit—*per Trevelyan J., in Ramdeo v. Pokhram, I. L. R. 21 Cal. at p. 425; see also Lovejoy v. Cole, (1894) 2 Q. B. 861.*

Admitted to occupation—Defined, *Act 8, 1885, S. 47.*

Admonition—The House of Commons is invested with the power of enforcing its privileges and of punishing those who infringe them. The mildest form of punishment is by summons to the

bar of the House, followed by an *admonition* addressed to the offender by the speaker. The person so summoned may purge himself of his contempt by an apology accepted by the House in full satisfaction of his offence, and so may escape being *admonished*—*Anson's Law and Custom of the Constitution Part I* p. 166.

Adoptive father—In art. 129, sch. ii. of Act 9 of 1871, *See Sidhesar Dat, v. Sham Chand*, 23 W. R. 285.

Adult—See “Statute Adult.”

Adulteration—The corrupt product of any article, especially food—W. L. L.

Adultery—Defined, Act 45, 1860, S. 497; *Regn.* 5, 1872, S. 7.

The meaning of the word “adultery” in S. 488 Criminal Procedure Code is not limited to the very limited definition of the word in S. 497 of the Indian Penal Code. It is used in S. 488 in the ordinary sense, that is; a married man having sexual connection with a woman who is not his wife—See the observations of Collins C. J., Shepherd, Subramanya Ayyar and Benson JJ in *Appallama v. Yellama*, I. L. R. 20 Mad. p. 470 and of Best J. in *Q. E. v. Mannatha Achari*, I. L. R. 17 Mad. 260. See also “Bigamy with adultery” and “Incestuous adultery.”

Advance of money on account of work—(As used in Act 13 of 1859,) *See Q. E. v. Rajab*, I. L. R. 16 Bom. 368.

Adverse possession—“By ‘adverse possession’ I understand to be meant possession by a person holding the land on his own behalf or on behalf of some person other than the true owner, the true owner having a right to immediate possession”—*per Markby J. in Bejoy Chandra Banerji v. Kally Prosannath Mukerji*, I. L. R. 4 Cal. at p. 329; it is the *intention* to claim adversely accompanied by such an invasion of the rights of the opposite party as gives him a cause of action, which constitutes adverse possession—*See Sivasubra v. Secretary of State*, I. L. R. 9 Mad. at p. 303.

It is convenient to continue the use of the word ‘adverse’ to describe the position of a person whose possession is not derivative, notwithstanding the somewhat unfortunate history

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of that word in English Law. Prior to the passing of the statute of William the Fourth, a doctrine of adverse possession had been set up which the ablest lawyers declared to be unintelligible, and one of the main object of these statutes was to sweep away this unintelligible doctrine. But there is no impropriety in now using the word 'adverse' in what appears to be its natural meaning—*Markby's Elements of Law*, S. 585 note, 3rd edition.

In British India an express law for the acquisition by prescription of ownership in corporeal property was attempted to be introduced by Sir James Colvile in 1859, and by Sir James Fitz, James Stephen, in 1871, but Act 14 of 1859 and Act 9 of 1871 were passed only after the clauses relating to such acquisition had been expunged from the Bills as introduced. The Act of 1871, however, contained an extinctive clause similar to that in the statute of William IV. The last Limitation Act (15 of 1877) extends the rule of extinctive prescription (see S. 28) to moveable property, but even this does not contain any express law of Translative Prescription—*See Mitra's Limitation*, edition 1896, p. 15.

Possession after a certain period fixed by the Law, ought to prevail over all other titles. If you have suffered that period to elapse without putting in a claim, it is proof, either that you were ignorant of the existence of your right, or that you had no intention to avail yourself of it. In these two cases, there is no expectation on your part, no desire to gain possession, and on my part there is an expectation and a desire to preserve it. To leave the possession in me will be contrary to security, but it will be an attack upon security to transfer the possession to you, for it will give inquietitude to all possessors who are obliged to rely for their possession in good fate—*Bentham's theory of Legislation* pp. 159, 160.

Advertisement—Defined, Act, 18, 1831, S. 41.

Advocate—One who pleads the cause of another in a court of law or other judicial tribunal—*See E. L. E.*

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Advocate general—Defined, Act 17 1864, S. 24 (ad. Act 2, 1890, S. 7); Act 2, 1874, S. 68, (ad. Act 2, 1890, S. 15); Act 10, 1882, S. 4 (k); 52 V. c. 10, S. 11; Act 5, 1898, S. 4 (a).

Advocate of a High Court—Defined, Act 15, 1882, S. 7.

Afāt Asmāni—"The expression 'afāt āsmāni' applies to a loss sustained by accidental fire"—per Sargent C. J., in *Sakharam Shet v. Amtha Devji Gandhi*, I. L. R. 14 Bomb. at p. 30.

Affairs—A person's concerns in trade or property—*W. L. L.*

Affecting the decision of the case—The expression as used in S. 591 of the Code of Civil Procedure (Act XIV of 1882) means affecting the decision of the case with reference to the merits of it—See *Chintamani Dasi v. Raghunath Sahu*, I. L. R. 22 Cal. 981.

Affecting immoveable property—As used in S. 49 Indian Registration Act 1877 means so far as it affects immoveable property—per Flowden and Riwaz JJ., *P. R.* 1891 No. 83, at p. 413; See also *Ulfat-un-nisa v. Husain Khan* I. L. R. 9 Cal. 520.

Affidavit—Defined, 52-3 V. c. 63, S. 6; Act 30 1852, S. 13; Act 10, 1897, S. 3 (3); *Beng. Act* 5 1867, S. 1; . *Bom Act* 3, 1886, S. 3, (19); *Mad. Act* 1, 1891, S. 3 (20); *N. and O. Act* 1, 1887, S. 2 (25).

Affray—Defined, *Act* 45, 1860 S. 159.

Aforesaid—When the word is used as an adjective it can hardly create much difficulty. But when used adverbially as in the expressions as "aforesaid," "in manner aforesaid," and such like, then difficulty may very easily arise—Generally speaking such referential expressions indicate the manner in, or conditions on which, not the persons by whom, benefits are to be taken—*S. J. D.*

As used in proviso to S. 153 of Bengal Tenancy Act, See *Shankarmani Debya v. Mathura Dhupeni*, I. L. R., 15 Cal. 327.

After—When an act has to be done within so many days "after",

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a given *event*, the day of such event is not to be reckoned, and the party to do the act has the whole of the last day of the prescribed time in which to do it—*See Williams v. Burgess* 10 L. J. Q. B. 10; *Robinson v. Waddington*, 18 L. J. Q. B., 250.

After it has been satisfied—As used in s. 210 of the Indian Penal Code indicates only the *fact* of the satisfaction of the decree—*See Madhab Chunder Mozumdar v. Nowodeep Chunder Pandit*, I. L. R. 16 Cal. 126.

After sight—Defined, *Act* 26, 1881, S. 21.

Against—"A decree would be 'against' the debtor when passed within the meaning of S. 4 of Act 7 of 1889 although he *consented* to it"—*per Sargent C. J. in Santuji Khanderao v. Ravji*, I. L. R. 15 Bom. at p. 106.

Agent—Defined, *Act* 9, 1872, ss. 182, 194; *Act* 9, 1874; S. 32; Beng. Act I, 1889, S. 2; Beng. Act 1, 1896, S. 2; Bom. Act 2, 1887, S. 2, (3); N. and O. Act 3, 1892, S. 23 (2); See also "Local Agent;" "Recognized Agent;" "Representative;" "Sub-Agent."

"There has been much discussion as to what is the true distinction between an *agent* and a mere *messenger*. Some persons deny that there is any distinction and I am also inclined to think that there is none. It is possible, no doubt, so to narrow the functions of the person employed, and so completely to deprive him of all discretion as to make him the mere 'tool' of his employer. But from this case up to that of a general agent with the widest discretion we advance by imperceptible degrees and I know of no point where the line can be drawn between agent and messengers"—*per Mr. Markby*, in *Elements of Law* S. 253, 3rd edition.

"A *Khazanchi* is not an agent within the meaning of S. 90, of Criminal Procedure Code (Act 10 of 1872); a *dewan* may be so if his master is absent"—*per Markby J.*, in *Empress v. Achraj Lal*, I. L. R. 4 Cal. 603.

Agnates—Relations by the father: as cognates are relations by the mother—*T. D.*

Aggrieved—As used in S. 198, Criminal Procedure Code (Act 10 of 1882)—See “person aggrieved.”

Agreement—“A joining together of two or more minds in anything done, or to be done. The joint consent of two or more parties to a contract or bargain; or rather the effect of such consent”—*T. L. D.*; “is the expression, by two or more persons, of an intention to affect the legal relations of these persons”—*E. L. E.*

Defined, *Act 9, 1872, S. 2, (e)*; *Act 16, 1887, S. 112*; See also, *Special agreement* “*Void agreement.*”

For the meaning of the word as used in Section 48 of Act 20 of 1886, see *Selam Sheikh v. Baidnath Ghatak, 3 B. L. R. at p. 315 (Appltd. Civil).*

Agreement to lease—as used in sch. I art. 4 of the Stamp Act 1 of 1879, see Reference under Stamp Act, S. 46, *I. L. R. 17 Mad. 280.*

Agreement not otherwise provided for—as used in Stamp Act 1 of 1879, sch. I art. 5 (c), see Stamp Reference, *I. L. R. 15 Mad. 134.*

Agreement by way of wager as used in S. 30 Contract Act (9 of 1872) see “wager”

Agreed to be given—As used in Stamp Act 1, of 1879, Sch. I, art. 44. (a) see, *Hingan ghat Mill & Co. Ltd., v. Reckhand, Bhikam Chand. I. L. R. 8 Bom. 310.*

Agricultural year—Defined, *Act 19, 1873, S. 3, (8)*; *Act 17 1876, S. 2*; *Act 18, 1881, S. 4 (5)*; *Act 9, 1883, S. 3, (10)*; *Act 8, 1885, S. 3, (11)*; *Act 16, 1887, S. 4 (17)*; *Act 17 1887, S. 3, (14)*; *Regn. 2, 1877, S. 2 (a)*; *Regn. 1, 1836, S. 3 (j)* *Act, 2 1898, S. 2 (1).*

Agriculturist—Defined, *Act 17. 1879, S. 2 (1st and 2nd)* (*Am. Act 6, 1895, S. 2*); *Act 13 of 1900, S. 2 (1).*

Ahfad—Means descendants and may include the descendants of females—see *Sheikh Karim-ud-din v. Nawab Mir Syed Alam Khan, I. L. R. 10 Bom. at p. 122.*

Aid the doing of acts—Defined, *Act 15, 1860, S. 107, Explanation.*

A-immah—As used in the Mahammedan Law means learned or religious men. Allowances to religious or other persons of the

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Mahammedan persuasion. Land given as a reward or favour by the king at a very low rent. Charity lands.—See *Glossary Mac. Mhn. Law*.

Alias—A second name applied to a person when it is doubtful which of two names is his real name—*W. L. L.*

Alibi (elsewhere)—“It is a defence resorted to when the party accused in order to prove that he could not have committed the crime with which he is charged, offers evidence that he was in a different place at the time the offence was committed”—*W. L. L.*

Alien—An alien is one who “is born out of the allegiance of our sovereign lord the king”—*Isaason v. Durant*, 55 L. J. Q. B. 331
Alien enemy residing in a foreign country—Act 14, 1852, S. 430, *Explanation*.

Alienated—Defined, *Bom. Act 5, 1879, S. 3 (19)*; *Bom. Act 4, 1881, S. 6, Explanation*.

Alienated holding—As used in the Bombay Land Revenue Act 5 of 1879, see *Sanwal Das Bechai Desai v. The Secretary of State for India*, I. L. R. 16 Bom. 455.

Alienated lands.—“In the Bombay Revenue language all lands held either revenue free or at a reduced rate are called “alienated lands.” The term ‘alienated’ implies that Government has parted with its revenue rights absolutely or to some extent (levying only a quit-rent).”

“Wherever there was once a system of estates held by chiefs there are also sure to be many relics of grants of the King’s revenue. For it is only the greater chiefs who form a graded series of rulers in connection with the central power, a large number of the minor ones either hold life estate for their subsistence or receive assignments of revenue. These grants may be classed as (1) Political, (2) Service, (3) Religious (4) Personal.

The ‘political’ are the Mahammedan grants of Jagir for the support of troops or the payment of other service. No condition of service is now exacted, this having been commuted to a money payment; and the grant is a personal distinction for life or lives, or in perpetuity as the case may be.

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Under the head of the 'Personal' it may be noticed that among others there are found to be grants called *halia* (tombstone field) for support of a tomb in memory of some *charan* (bard), or Brahmin who had killed himself in the interest of the village." See *Baden-Powell's Land-system of British India* vol. III pp. 298, 301 (edition 1892).

Alienation—Defined, *Bom. Act 6, 1888, S. 2 (1) (d)*.

"A transferring the property of a thing to another ; it chiefly relates to lands and tenements"—*T. L. D.*

As used in Sch. ii. art. 125, Indian Limitation Act XV of 1877; see *Sheo Singh v. Jeoni. I. L. R. 19 All. 524* ; *Gulab Singh v. Lacho Kuor, W. N. 1890 p. 184*.

Alienee—Defined, *Bom. Act 6, 1888, s. 2 (1) (d)*.

Alimony—"The allowance made to a wife out of her husband's estate for her support, either during a matrimonial suit or at its termination, when she proves herself entitled to a separate maintenance and the fact of a marriage is established"—*W. L. L.*

All—Is equivalent to "each and every"—See *Burnett v. G. N. of Scotland, 54 L. J. Q. B. 539* ; but with the context it may mean "any"—*S. J. D.*

All persons—As used in S. 85 Transfer of Property Act 4 of 1882, "could have hardly been intended to include a Mitakshara son, much less a minor son in a suit when the father is sued in his representative capacity " per Ghose J. in *Lala Suraja Prasad v. Golab Chand, I. L. R. 27 Cal. 725 at p. 745* ; but see *Bhawani Prasad v. Kallu, I. L R., 17 All. 537*.

All fours—"a case agreeing in all its circumstances with another case is sometimes said to be *on all fours* with it"—*W. L. L.*

Allegiance—"Allegiance or leige homage differs from homage and fealty. Fealty is the simple undertaking to be faithful, an undertaking fortified by an oath. Homage is the undertaking to be faithful in respect of land, binding the vassal to the lord of whom he holds lands. Allegiance is the duty which every man owed to be faithful to the head of the nation land or no land. But as the king was supreme landowner and judge,

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the ideas of homage and fealty were merged in allegiance"—*Anson's Law of custom and the constitution Part II* p. 68.

Alluvion—"Accession caused by the natural action of a river are divided into four distinct heads:—

(1) That which is imperceptibly added to land by a river by *alluvio*, or *alluvion* (the term also sometimes denotes the increment so added).

(2) That which being detached from the land of one person by the open violence of a river, becomes united with the land of another. The process is called *avulsio* or *avulsion* (which sometimes also applies to the increment added in this mode).

(3) Island springing up in a river called *Insula Nata*.

(4) Bed abandoned by a river, called *Alneus relictus*

Alluvion is said to be *incrementum latens i. e.* an imperceptible addition when anything is so gradually and secretly added that we cannot perceive by our senses the quantity which at each moment of time is detached from the land of another person and added to ours.

Avulsion—If however the violence of the stream sweeps away a parcel of your land and carries it down to the land of your neighbour; it clearly remains yours, though in process of time, it fully becomes attached to your neighbour's land and the trees which it carried with it struck root in the latter they are deemed from that time to have become part and parcel thereof"—*Law of Riparian Rights, T. L. L.* 1889 pp. 120, 121, 122. See *Regulation XI of 1825 cl. 1 and 2 S. 4.*

Altamgha—"A royal grant in perpetuity. Perpetual tenure. A heritable jagir in perpetuity"—*Gloss. Mac. Mhn. Law.*

The word "altamgha" or "altamgha enam" used in a Royal Grant does not of itself convey an absolute proprietary rights to the grantee—see *Jiwan Das Sahu v. Shah Kabiruddin*, 2 M. I. A. 390.

Alter—As used in S. 227 of the Code of Criminal Procedure (Act 10 of 1882) includes withdrawal by a Sessions Judge of a charge added by him to the charge on which the commitment

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has been made —per Young J. in *Dwarka Lal v. Mahadeo Rai*, *I. L. R.* 12 *All.* 551; it may mean 'addition' "but in that case it must, we think, be an addition to some specific charge in the nature of an alteration and not the addition of a new charge"—per Sargent C. J. in *Q. E.*, v. *Appa Subhana Mendu*, *I. L. R.* 8 *Bom.* p. 201.

Altering composition of coin—Defined, Act 45, 1860, S. 249, *Explanation*.

Alternative—The word as used in S. 453 Criminal Procedure Code means that where the facts which can be proved make it doubtful what particular description of an offence an accused person has committed the charge may be so varied or alternated as will guard against his escaping conviction through technical difficulty—*pre* Duthoit J, *Q. E.* v. *Ghulet*, *I. L. R.* 7 *All.* at p. 46.

Always—The words such as "always" and for "ever" need not denote more than life-interest—See Moulvi Abdul Majid v. Fatma Bibi, 12 *I. A.*, 159.

Ambassador—"Important and pressing matters of a State cannot be dealt with wholly by correspondence. So in all foreign civilized states of any importance the interests of the country are superintended by two classes of agents resident on the spot: diplomatic agents and consuls. A diplomatic agent may in point of dignity be an *ambassador* or merely a *charge 'd' affaires*. He may be permanently accredited to the court of a foreign country or he may be despatched on a special mission: but in all cases he represents the state from which he is sent. Ambassadors and envoys plenipotentiary receive powers to treat and negotiate under the great seal, and also a letter of credence under the sign manual to the Sovereign or President of the country to which they are sent. *Charge 'd' Affaires* has no such ample powers and his letters of credence is signed by the Secretary of State"—*Ansons Law and custom of the constitution Vol. II pp.* 274 275.

Ambiguity—"Doubtfulness, double meaning, obscurity. There are two sorts of ambiguities of words, the one is *ambiguitus*

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patens (patent ambiguity), and the other *latens* (latent)—*Patens* is that which appears to be ambiguous upon the deed or instruments; *latens* (latent) is that which seemeth certain and without ambiguity, for anything that appeareth upon the deed or instrument; but there is some collateral matter out of the deed that breedeth the ambiguity—*Ambiguitas patens* is never holpen by averment and the reason is because the law will not couple and mingle matter or speciality, which is of the higher account, with matter of averment which is of inferior account in law; for that were to make all deeds hollow, and subject to averments and so in effect that to pass without deed, which the law appointeth shall not pass but by deed”—*per* Lord Bacon, (see Bacon's Law Tracts! 99, 100).

“Then a difference between *ambiguity* and *unintelligibility* must not be lost sight of. A written instrument is not ambiguous because an ignorant and uninformed person is unable to interpret it. It is ambiguous only if found to be of uncertain meaning when persons of *competent skill and information* are unable to do so. Words cannot be ambiguous because they are unintelligible to a man who cannot read; nor can they be ambiguous merely because the court which is called upon to explain them may be ignorant of a particular fact, art or science, which was familiar to the person who used the words, and a knowledge of which is therefore necessary to a right understanding of words he has used”—Vice Chancellor Wigram's *Rules of extrinsic evidence in aid of the Interpretation of Wills*, ss. 200 and 201 (4th edition).

Amenable—Responsible or subject to answer in a Court of Justice—*W. L. L.*

Amidships—Defined, 57-8 I. c. 60, S. 437 (4); Act 7, 1880, S. 4 (ad. Act 17, 1891, S. 3.)

Amendment—A correction of any errors in the pleadings in actions, suits, or prosecutions—*W. L. L.*

Amin—Defined, *Ben. Act* 8, 1876, S. 4 (i).

Ammunition—Defined, Act 2, 1878, S. 4; Saltpetre is not an ammunition within the meaning of S. 321 ch. 2, of Act 31, of 1860, See *Crown v. Ram Rattan P. R.* 1869 No. 25; “We doubt

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whether a loaded cartridge can be properly described as ammunition" *per* Plowden and Roe JJ. in *Juman Khan v. Empress*, P. R. 1890, No. 20 at p. 44.

Amount—For the meaning of the word as used in art. 15, sch. I of Act 18 of 1869, see *Reference by the Board of Revenue*, 16 W. R. 208.

Amount of rent annually payable by a tenant.—For the meaning of the expression as used in S. 153 (a) of the Bengal Tenancy Act (8 of 1885), see *Narain Mahton v. Munsofi Pattak*, I. L. R. 17 Cal. 489; *Prasanna v. Srinath Das*, I. L. R. 15 Cal. 231; *Raicharan Ghosh v. Kumud Mohan Das Chaudhari*, 2 C. W. N. p. 297.

Amount of compensation.—For the meaning of the term as used in S. 24 of Act 10 of 1870 (Land Acquisition), see *Hiran Krishna Bose v. Verner*, 13 B. L. R. 300.

An account—The term "an account" as used in S. 98 of Act 5 of 1881, means, "one account, not a series of accounts"—*per* Macleod C. J. in *Mahesh Chandur Bhattacharji v. Bishwanath Bhattacharji*, C. W. N. Vol. I at p. 648.

An incumbrance—As used in S. 295, proviso (c) of the Civil Procedure Code, and S. 80 Transfer of Property Act (4 of 1882), see the observations of Edge C. J. in *Mithu Lal v. Kishan Lal*, I. L. R. 12 All. 546 at 1. 547.

An offence attended by Criminal force—As used in S. 522 of Criminal Procedure Code Act (10 of 1882),—See *Ramchandra Boral v. Jityandra*, I. L. R. 25 Cal. 434.

Analogy—"Identity or similarity of proposition : where there is no precedent in point, in cases on the same subject, lawyers have recourse to cases in a different subject matter, but governed by the same general principle. This is reasoning by analogy"—W. L. L.

Parke J. (in *Mirehouse v. Rennell*, 8 Bing. at p. 515) observes : "The case, (speaking of the case actually before him) therefore, is in some sense new, as many others are which continually occur ; but we have no right to consider it because it is new, as one for which the law has not provided at all ; and because it has not yet been decided, to decide it for ourselves, according to our own

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judgment of what is just and expedient. Our common law system consists in applying to new combinations of circumstances, those rules of law which we derive from legal principles and judicial precedents : and for the sake of attaining uniformity, consistency and certainty, we must apply those rules where they are not plainly unreasonable or inconvenient, to all cases which arise; and we are not at liberty to reject them and to abandon all analogy to them, in those to which, they have not yet been judicially applied because we think that the rules are not as convenient and reasonable as we ourselves could have devised. It appears to me to be of great importance to keep this principle of decision steadily in view, not merely for the determination of the particular case, but for the interest of law as science."

Ancestor—"One that has gone before in a family. It differs from predecessor in that it is applied to a natural person and his progenitors, while the latter is applied also to a corporation and those who have held offices before those who now fill them"—*W. L. L.*

Ancestral property—Defined, *Act 18, 1876, S. 20, Explanation.*

"The term "ancestral property" is not confined to such property as the father had derived from his ancestors, but includes "paternal" property or such as had been acquired by the father by whatever title and was possessed by him at the time of his decease"—*per Lord Justice Bruce* (while delivering the judgment of their Lordships of the Privy Council in *Rajmohan Gossain v. Gour Mohan, Gossain* 8 *M. I. A.* at p. 46.)

"The word "ancestral" can only be used in a relative and not in a fixed or absolute sense in customary law, and before the character can be predicated of any property in the hands of a male owner, it must be found that it has descended to him from a male ancestor, and in the case of a claim by collaterals, from a male ancestor common to him and the claimants"—*per Chatterji J.* in *Lehna and another v. Musammatt Thakuri and another*, *P. R.* 1895 No. 32.

Anchorage—A duty taken from the owners of ships for the use of the havens where they cast anchors—*W. L. L.*

Ancient documents—Documents thirty years old are "ancient

documents" in the eye of Law—These are presumed to be genuine without express proof, when coming from the proper custody—See S. 90, *Indian Evidence Act of 1872*.

And—In S. 3, cl. 6 of the Land Registration Act (Bengal Act 7 of 1876) is *disjunctive* and not *conjunctive*—*per* Norris and Macpherson JJ. in *Magbul Ahmed Chowdhari v. Girish Chander Kundu* I. L. R. 22 Cal. at p. 637 See "or."

Anglican—Defined, Act 15 of 1872. S. 3.

Animal—Defined, Act 45 of 1860. S. 47; Act 2 of 1890. S. 2 (1); Act 20 of 1891. S. 100 (4); Ben. Act 1 of 1869, S. 1; Ben. Act 2 of 1888, S. 33. Madras Act 2 of 1866, S. 2; See also "Cattle," "Horse".

The word "animal" ordinarily means an organized or living being having sensation and power of voluntary motion, an inferior or irrational being as distinguished from man—*per* Ghose J. in *Tulshi Bewah v. Sweeney*, I. L. R. 24 Cal. at p. 885.

A crab is an animal within the meaning of S. 2 of Act 11 of 1890. *Ibi*.

Animal lymph—Defined, Bom. Act 1877, S. 2 (6); Bom. Act 4 of 1879, S. 2 (6); Bom. Act 1 of 1892, S. 4 (6)

Annoy—The word 'annoy' as used in S. 441 I. P. C. means annoyance that would generally and reasonably affect an ordinary person, not what would specially and exclusively annoy a particular individual—*per* Straight J., *In the matter of the petition of Govind Prashad* I. L. R. 2 All. at p. 467.

Is equivalent to molest—*per* Mathew and Charles JJ. in *Sweet v. Sweet*, (1895), 1 Q. B. D. pp. 14 and 15; *Fearon v. Earl of Aylesford*, 14 Q. B. D. 792.

Annoyance—"Annoyance is a wider term than nuisance, and if you find a thing which reasonably troubles the mind and plea-

sure not of a fanciful person or of a skilled person who knows the truth, but of an ordinary sensible inhabitant of a house ; if you find there is anything which disturbs his reasonable peace of mind, that seems to me to be an annoyance although it may not appear to amount to physical detriment or comfort"—*per* Bowen L. J. in *Todsteatly v. Benham*, 40 Ch. D. at p. 98.

Annual Profits—See " Net annual Profits ".

Annual Value—Means " Net Value "—*per* L. Bramwell in *Dobbs v. Grand Junction Waterworks Co.* 53 L. J. Q. B. 52 ; Defined in Act 19 of 1893. S. 3 (6) ; Act 3 of 1878, S. 4 ; Act 10 of 1878, S. 2 ; Act 20 of 1883, S. 3 (4) ; Act 17 of 1884. S. 41 (2) ; Act 17 of 1887, S. 29 (2) (*am. Act* 17 of 1896 S. 2) ; Act 9 of 1889, S. 4. (5), 9 (5) ; Act 20 of 1891, S. 2 (2) ; *Ben. Act* 9 of 1880, S. 4 ; *N & O Act* 5 of 1894 S. 3 (4) ; *Regn.* 3 of 1879, S. 2 (5) ; *Regn.* 1886, S. 41 (2) ; *Regn.* 6. 1886 S. 2 (2),

Annuity—A yearly payment of a certain sum of money granted to another for life, for years or in fee, to be received of the grantor or his heirs, so that no freehold be charged therewith—*T. L. D.*

Anointing—In ancient times certain formalities were observed on the coronation of a Sovereign in England—Anointing, or the sprinkling of some oil over the person. of the Sovereign was one of these. The practice still lingers. On the coronation of the late Sovereign Queen 'anointing' followed the ceremonies of 'Recognition' and Coronation Oath. Anson's Law & Custom of the Constitution Vol. 11 pp 65, 66. See 'Recognition' and 'Coronation Oath'.

Antecedent debt—The term " antecedent debt " as used in Hindu Law, means the debt of the father which has been paid off by a fresh debt, a sale, or a mortgage. The last debt or mortgage debt would not be an " antecedent debt. " The prior debt which

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is wiped off is the " antecedent debt ". *T. L. L.* 1895—96 p. 142 ,
See the observations of Bigot J. in *Khalil-ul Rahman v. Govind Prasad*, *I. L. R.* 20 *Cal.* 328 at p. 346, and of Clark J. in *P. R.* 1898, No. 72, at p. 251 ; See also *Lachman Das v. Girdhar Chowdhary*, *I. L.* 15 *Cal.* 855 and the cases cited therein.

Any—" Excludes limitation or equalification "—per Fry L. J. in *Duck v. Bates*, 53 *L. J. Q. B.*, 344 ; 12 *Q. B. D.* 79 ; "it is as wide as possible"—per Chitty J. in *Becket v. Sulton*, 51 *L. J. Ch.* 433.

Any case—The term as used in S. 555 of the Code of Criminal Procedure (Act 10 of 1882)" is wide enough to include the hearing of an appeal"—per Bonerjee J, in *Nistarin Bibi v. Ghose*, *I. L. R.* 23 *Cal.* at p. 47 as used in S. 155 of Bengal Tenancy Act 8 of 1885 means " in every case "—See *Pershad Singh v. Ram Pertap Roy*, *I. L. R.* 22 *Cal.* 77.

Any contract—The term as used in cl. 9, S. 1 of Act 14 of 1859 (Limitation) does not mean " any implied contract"—See *Umed Chund Hukum Chund v. Bulaki Das Lal Chund*, 5 *Bom. H. C. R.* at p. 21.

Any Court—The term as used in S. 258 Civil Procedure Code (Act 14 of 1882) has no application to a Criminal Court investigating a charge of fraudulently executing a decree under S. 210 of the Indian Penal Code—*Q. E. v. Bijaiji Daya Ram* *I. L. R.* 10 *Bom.* 288,

Any epidemic—See *Aminchand and Khushal Singh v. Q. E.*, *P. R.* 1893 No. 8.

Any difference—The term as used in S. 523 of the Code of Civil Procedure (Act 14 of 1882) embraces alike any present difference and any future difference arising out of the contract—per Farran C. J. in *Fazul Bhoy Mehrali Chinoy v. The Bombay and Persia Steam Navigation Co. Ltd.*, *I. L. R.* 20 *Bom.* at p. 235.

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Any Law—The term as used in S. 23 of contract Act (9 of 1872) refers to some substantive law and not to an adjective law such as the Procedure Code is—*Hukum Chund Oswal v. Tahurunnisa Bibi I. L. R. 16 Cal. at p. 50.*

Any obligation—The words as used in S. 92 proviso 3rd. of Act 1 of 1872 (Evidence) mean any obligation whatever under the contract and not some particular obligation which the contract may contain—*per Garth C. J. Jugtanand Misra v. Nerghan Singh, I. L. R. 6 Cal. at p. 435.*

Any other act of bad faith—For the meaning of the expression as used in S. 351, cl. (d) of the Civil Procedure Code (Act 14 of 1882) See *Gopal Das v. Behari Lal, I. L. R. 17 All. 218* and the cases cited therein.

Any other evidence—As used in S. 120 Bengal Tenancy Act 8 of 1885, See *Nilmoni Chuckerbati v. Bykunt Nath Bera, I. L. R. 17 Cal. 466,*

Any other questions arising—The expression as used in cl. (c) of S. 244 Civil Procedure Code should be read as “any other questions directly arising”—*per Duthoit J in Ram Gulam v. Dwarka Roy I. L. R. All. 171.*

Any other person—The term as used in the concluding portion of cl. (c). of S. 68 of the Transfer of Property Act means “any other person having a title”—*per Banerji J. in Nakchedi Ram v. Ram Charittar Rai, I. L. R. 19 All. at p. 192* and the cases cited therein.

Any person—The words as used in S. 311 C. P. C. (Act 14 of 1882) include a person claiming by title pursuant to or independent of the judgment debtor—*per Mahmood J. in Sheo Prasad v. Hira Lal, I. L. R. 12 All. at p. 457* but see *Asmutunnissa v. Ashraf Ali I. L. R. 15 Cal. 488*; as used in S. 32 of Legal Practitioners Act (18 of 1879) embrace pure outsiders

as well as duly qualified and enrolled mukhtars who have failed to take out certificates—see *Tusudug Husain v. Girdhar Narain*, I. L. R. 14 Cal. 556, *Any person whose immoveable property has been sold*—(as used in S. 311 C. P. C.)—see *In the matter of the petition of Bhagbuti Charan Bhattacharji Chowdhari*, I. L. R. 8 Cal. 367.

Any person in possession—(as used in S. 441 of the Indian P. Code.) See the observations of Jardine J. in *Imperatrix v. Keshav Lal*, I, L. R. 21 Bom. 536.

Any person intending to register any document—(as used in S. 31 of the registration Act VIII of 1871), See *Isak Mohammad v. Bai Khatiju*, I. L. R. 6 Bom. 96.

Any portion of his property—(as used in S. 483 C. P. C. Act 10 at 1877)—See *Govind Chundra Kundu v. Taruk Chunder Bose* I. C. L. R. p. 336.

Any proceeding commenced before the repealing Act shall come into operation—(as used in S. 6 of the General clause Act 1 of 1868) See *Hurro Sundari Debi v. Bhojhan Das Manji*, I. L. R. 13 Cal. 86.

Any recorded cosharer—As used in S. 188 of the N. W. P. Land Revenue Act 19 of 1873, means any pattidar, that is, the holder of a share in a pattidari estate or mahal—per Mahmood J. in *Baij Nath v. Sital Singh*, I L. R. 13 All. at p. 249.

Any such offence—(as used in S. 478 of Criminal Procedure Code, Act 10 of 1882)—See *Akhil Chundra De. v. Q. E.*, I. L. R. 22 Cal. 1001.

"Any such woman—The term as used in S. 498 I. P. C. means any woman who is and whom the offender knows to be, the wife of another man, and not any woman who has been

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taken or enticed away"—per [Roe J. in *Ali Buksh v. Q. E.*, P. R. 1891 No. 16 ; see also *Empress v. Nirdur* I. L. R. 10 All. 580.

Any such order—see P. R. 1883 No. 156.

Any time—(As used in S. 169 of Act 20 of 1861) see *Seeta Ram Sahoo v. Babu Sheo Gulam Sahoo*, 18 W. R. 62.

Any tree—The words as used in S. 14 of Bombay Abkari Act (5 of 1878) mean all trees in the Bombay Presidency to which the Act applies from which toddy is drawn or produced and not merely those in respect to which no special right of drawing toddy previously existed—per Melvill J. in *Adesir Jehangir Framji Banerji v. The Secretary of State for India* I. L. R. 6 Bom. 398.

Apparent easement—Defined, Act 5, 1882, S. 5.

Appeal—Defined, 53—4 V. C. 27 S. 15.

As used in Act 179 (2), Sch 11 of Act 15 of 1877 (Limitation) includes an appeal to Her Majesty in council—See *Marsing Das v. Narain Das*, I. L. R. 2 All. 763 ; *Gopal Sahu Deo v. Jay Ram Mewari*, I. L. R. 7 Cal. 620 : S. C. 9 C. L. R. 402 ; see also the observations of Parson J. in *Abdul Rahman v. Medai Saiba*, I. L. R. 22 Bom. at p. 505 ; (As used in S. 647 Civil Procedure Code), see *Rudha Charan v. Man Singh*, I. L. R. 12 All. 32.

Appeal allowed by law—(As used in S. 11 of the revenue Jurisdiction Act 10 of 1876, see *Ram Chund Haribhai v. The Secretary of State for India*, I. L. R. 22 Bom. 583.

Appeal Presented—See "presented."

Appearance—As used in Act 22 of 1865 does not mean actual presence before the Judge in Court—per Jackson J. in *Gajraj and others appellants* 10 W. R. 353.

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(As used in Chap. VII of the Code of Civil Procedure, Act 14 of 1882), See the observations of Strachy J. in *Soonder Lal v. Goor prasad*, *I. L. R.* 23 Bom. 414.

Appertenant—The words ‘appertenant’ or ‘belonging’ will ordinarily carry only actual existing easements and therefore will carry no right of way over the land of the grantor though under certain circumstances even these words will have a wider construction—*per* Wilson J. in *Chunder Coomar Mukerji v. Kaylash Chunder Sett*, *I. L. R.* 7 Cal. at p. 670 and the cases cited therein.

Applicants—Defined, Act 15 of 1877. S. 3 ; Act 5 of 1888, S. 4 (3) and (5); *Beng. Act* 8 of 1876, S. 4 (ii) ; (as used in S. 256 of Act 8 of 1859 C. P. C.) is not confined to the parties to the suit—see *Krishnarao Vankatesh v. Vasudeva Anant*, 11 Bom H. C. R. 15.

Application—(As used in S. 230 C. P. C. Act 14 of 1882), “mean any application to execute a decree. It is not confined to the last application preceding the expiry of the period of 12 years from either of the points of time mentioned in cl. (a) or cl. (b) of the same para.” *per* Burkitt J. in *Tellesher Rai v. Parbati*, *I. L. R.* 15 All. 198 ; the words “subsequent application to execute the same decree ” mean a *substantive application*, in form prescribed by S. 235 of the Code—see the observations of Knox J. in *Rahim Ali Khan v. Phul Chund*, *I. L. R.* 18 All. at p. 486.

Applying—(As used in S. 212 of Act VIII of 1859) See *Chunder Coomar Roy v. Bhagbutty Prosonno Roy*, *I. L. R.* 3 Cal. 235 and *Probhacasao v. Potannah* *I. L. R.* 2 Mad. 1.

Applying in accordance with law—As used in Sch. 11, art. 179 (4) of Act 15 of 1877 means an application in accordance with the law relating to the execution of decrees—see *Bal Kishen*

v. Bedmati, I. L. R 20 Cal. 388; it further means an application to the Court to do something which by law the Court is competent to do, and it is inapplicable to an application to the Court to do something which to the decree holder's direct knowledge, or from his presumed knowledge of law, he must have known the Court was incompetent to do—see *Chattar v. Newal Singh*, 12 All. 64.

Appointed day—Defined, 49—50 V. C. 48, S. 27.

Apportionment—As used in part 4 of Land Acquisition Act 10 of 1870, should be given a liberal construction as including the case where the Court has to decide between rival claimants to the entire compensation—see *Kashim v. Aminbi*, I. L. R. 16 Bom. at p. 528.

Approbate and reprobate—A person is said to approbate and reprobate where he takes advantage of one part of a deed and rejects the rest. The maxim runs, *qui approbat non reprobat*. One who approbates cannot reprobate—W. L. L.

Approver or Prover—An accomplice in crime who accuses others of the same offence, and is admitted as a witness at the discretion of the Court to give evidence against his companions in guilt. He is vulgarly called "Queen's evidence"—W. L. L.; see S. 133 and *illus. (b) to S. 114 Indian Evidence Act*.

Arazidari (tenure)—Plots of land which, though included within the area of mouzas and mahals, are held on a distinct tenure form, and convey no title to rights and interests in, other parts of the mouzas and mahals, are known as "arazidari" in the Azamgarh District (N. W. P.). Most of them are resumed revenue free holdings—See *Gazeteer, N. W. P., Vol. 13, Part 1 Azamgarh*, p. 119.

Arbitrator—A disinterested person to whose judgment and decision matters in dispute are referred—W. L. L. A difference

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is made between "arbiter" and, arbitrator" though both find their power in the compromise of the parties, the former being obliged to judge according to the customs of the law; whereas the latter is at liberty to use his own discretion and accommodate the difference in that manner which appears most just and equitable—*Ibi*.

Area—Defined, *Beng. Act 3, 1883, S. 2*; See also "Notified area"; "Prescribed area"; "Vaccination area."

Arh and Mustaghraq—"Looking at the document (referring to the document in which these words were used) as a whole and considering the meanings, both primitive and secondary of "mustaghraq," I have no doubt whatsoever that it was intended to effect a mortgage without possession of the property named therein, and I think it did effect such mortgage—*per Young J. in Kishen Lal v. Ganga Ram, I. L. R. 13 All. at p. 41*; see also the observations of Mahmood J. *Ibi*.

Arms—Defined, *Act 2 of 1878, S. 4*; the term "arms" in *Act 11 of 1878* includes parts of arms—*per Turner C.J. in Q. E. v. Vyapuri Kangani, I. L. R. 7 Mad. at p. 71*; *per Roe J. in Nurdin and Nizamuddin v. Q. E., P. R., 1889, No. 38*; a revolver with a broken trigger is within the definition of "arms" in the *Indian Arms Act 2 of 1878, S. 4*, see *Q. E. v. Jayrani Raddi, I. L. R. 21 Mad. 360*.

Arrear—The word as used in *S. 29 Beng. Act. 8 of 1869* means "rent in arrear"—*per Garth C. J. in Kashi Kant Bhattacharji v. Rohini Kant Bhattacharji, I. L. R. 6 Cal. 325 at p. 328*; Defined, *Act 11 of 1898, S. 2 (2)*

Arrear of land revenue—Defined, *Act. 19, 1873, S. 148*; *Act. 18, 1881, S. 91*; *Act. 17, 1887. S. 3 (7)*; *Bom. Act 5, 1879, S. 147*; *Reg. 2, 1877, S. 74*.

Arrear of revenue—Defined *Act 1, 1845, S. 2*; *Act 2, 1859,*

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S. 2; *Act 2*, 1876, *S. 44*; *Mad. Act. 2*, 1864, *S.4. Regn. 1*, 1889 *S. 6 (2)*; *Regn. 3*, 1889, *S. 38 (3)*.

Arrear of rent—Defined, *Act 10*. 1859, *S. 20 Act. 9*, 1883 *S. 3*, (6) *Act. 8*, 1885, *S. 54 (3)*; *Act 16*, 1887, *S. 4 (4)*,

Arrear of Tax—Defined, *Act 20*, 1891, *S. 64 (2)*; *Regn. 5* 1886 *S. 63 (2)*.

Arrear under attachment—See *Bunwari Lal Sahoo v. Mahabeer Prasad Singh*. 12*B. L. R.* 297 *S. C. L. R.*, 1 *I. A.* 89.

Arrest—The restraining of the liberty of a man's person in order to compel obedience to the order of a Court of Justice, or to prevent the commission of a crime, or to ensure that a person charged or suspected of a crime may be forthcoming to answer it—*W. L. L.*; as used in *S. 349 Civil Procedure Code*' (*Act 14* of 1882) should be read as meaning "under detention" or "detained under custody"—see *In the matter of William Hastie*, *I. L. R.* 11 *Cal.* 451; it does not include "imprisonment"—see *Mahammad Husain v. Radi*, *I. L. R.* 12 *Bom.* 46 and the cases cited therein.

Arresting authority—Defined, 54 *V. c.* 31, *S. 9*.

Article—(As used in *S. 48. Act 26* of 1878), see *Empress v. Lalai*, *I. L. R.* 2 *All.* 301.

Article of sculpture—Defined, 7-8 *V. c.* 12, *S. 20*.

Artificial stream—An artificial stream is a stream which flows at its source by the operation of man, or, if it flows at its source by the operation of nature, flows in a channel made by man—*Law of Riparian Rights*, *I. L. L.*, 1889, p. 327; see also *Gaved v. Martyn*, 34 *L. J. C. P.*, 353. The water in an artificial stream flowing in the land of the person by whom it was caused to flow, is undoubtedly the property of that person, and is not subject to any rights or liabilities in respect of others—*Ibi*. See also the cases cited therein.

Artistic work—See “Literary and Artistic work.”

Arudikarei—One of the three forms of tenures in the villages in Madras. In this form the shares are divided out. The other two forms are: (1), *Samudayam* or *passangkarei*, (2), *Kareiyidu*. In (1), villages are cultivated and held entirely in common, and their produce distributed after defraying the revenue charges and village expenses. In (2), the land is temporarily allotted, and the shares are personally exchanged so as to give good and bad in turn to each (the *vesh* of the N. W. Punjab).—*Baden Powell's Land System of British India*

Asasulbait—Goods ; personal property ; household goods.

As far as may be—The term as used in S. 587 of Civil Procedure Code is not used in the wide sense of “as far as possible,” but it shall be taken to mean as far as is consistent with the principles on which second appeals are admitted and determined, which principles confine the adjudication to matters in which a question of law is involved—*per Innes J. in Hinde v. Brayan, I. L. R. 7 Mad. at p. 54.*

As of right—In *Alimuddin v. Wazeer Ali* (23 W. R. at p. 53) Markby J. observes :—“And giving to the words ‘as of right’ what I consider to be their true meaning, and also their accustomed meaning (for they are a well known legal expression), I think they signify no more than that the enjoyment must be by a person in the assertion of right.”

Ascertained—(As used in S. 111 of the Civil Procedure Code means “liquidated”—*per Oldfield J. in Pragi Lal v. Maxwell, I. L. R. 7 All. at p. 286*; this word has two meanings: (1) “known,” (2) made certain.—*S. J. D.*

Assault—Defined, *Act 15, 1860, S. 351*; *Act 15, 1887, S. 3 (6)*; *Act 5, 1892, S. 2 (6)*; *Reg. 3, 1881, S. 2*; *Regn. 2 1888, S. 2 (4)*; *Regn. 4. 1890, S. 3 (5).*

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Assembly—See “Member of an unlawful assembly”; “Unlawful assembly.”

Assets—The property of a deceased person which is chargeable with and applicable to the payment of his debts and legacies—*W. L. L. Defined, Act 2, 1874, S. 3 ; Act 6, 1882, SS. 139, 178 ; Beng. Act 8, 1876, S. 4 (iii) ; the term as used in S. 52 of the Administrator General's Act 2 of 1874 means and includes property of a deceased person chargeable with and applicable to the payment of his debts and legacies. It would therefore include immoveable property—per Sale J. in In the goods of Courjan, I. L. R. 25 Cal. at p. 73.*

Assets realized by sale or otherwise in execution of a decree.—See *Sheo Bux Bogla v. Shib Chunder Sen, I. L. R. 13 Cal. 225.*

Assign—Defined, 5, 6 *V. c.* 45, S. 2 ; *Act 5. 1888, S. 4 (4) ; Act 12 of 1898, S. 6, Explanation.*

“Assign is a word of the widest significance in respect to the nature of the transfer to which it relates. It does not in its accepted meaning import any restriction upon the *quantum* of interest transferred”—*per Blair J. in Behari Lal v. Mohammad Mustaki I. L. R. 20 All. at p. 485.*

Assignee—(As used in Inventions and Designs Act, 1888) “refers to an assignee of the entire title and interest of the inventor and not to an assignee of a share only”—*per Sale J. in, In the matter of the Inventions and Designs Act, I. L. R. 23 Cal. at p. 109 ; as used in S. 148, cl. (b) of the Bengal Tenancy Act 7 of 1885, see Chattarpat Singh v. Gopi Chund Bothia, I. L. R. 26 Cal. 750.*

Assistant Collector—Defined, *Bom. Act 2, 1890, S. 3 (b).*

Assistant Commissioner—Defined, *Act 18 1891, S. 4 ; Act 12,*

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1882 S. 3 ; *Act* 1. 1883, S. 2 ; *Act* 16, 1885, S. 3 ; *Regn.* 1, 1895 S. 2. (5).

Assistant Inspector—Defined, *Act* 1, 1882, S. 3.

Assistant President—Defined, *Act* 2, 1864, S. 1.

Assistant Superintendent—Defined, *Bom. Act* 2, 1890, S. 3 (a) ; *Regn.* 1896 S. 2 (2).

Assistant Superintendent of Police—Defined, *Bom. Act*, 8, 1867, S. 1.

Association—"To constitute an 'association' within the meaning of S. 4 of the Companies Act 6 of 1882, the existence of a legal relation between more than twenty persons giving rise to joint rights or obligations, or mutual rights and duties is absolutely necessary—otherwise there would be a mere conglomeration of persons but not an 'association'"—*per* Subramania Ayyar while delivering the judgment in *Panchena Mechu Nayar v. Gadinhari Kumaranchatta Padamnahbam Nayar*, I. L. R. 20 Mad. at p. 73. See "Company"

As such Judge or Magistrate—(As used in S. 487, Criminal Procedure Code, Act 10 of 1882,) see *Q. E. v. Raiji Daji*, I. L. R. 18 Bom. 380.

Assurance—Defined, *Act*, 30, 1839, S. 1.

At any time—(As used in S. 470 of Act 10 of 1872) see *E. v. Sabsukh*, I. L. R. 2 All. 533.

At sight—Defined, Act 26, 1881, S. 21.

At the time—(As used in cl. 4 of S. 23, Land Acquisition Act, 1 of 1894) means the time when the damage takes place and the right to compensation arises—*Collector of Dinagepur v. Girja Nath Rai*, I. L. R. 25 Cal. 346.

At the suit—(As used in S. 5 of the Insolvent Debtor's Act 2 and 12 V. C. 21) See *Q. E. v. Mancharji H. Readymoney*, 5 Bom. H. C. R. at p. 59.

Atrāfi dues—Dues levied annually by the village proprietors from the *Kamins* or artisans, generally weavers, residing and carrying on their trade in the village—see *Dasanudhi Ram. and others v. Pir Singh and others*, P. R. 1887, No. 108.

Attached—This word does not always mean physically fastened; it may also mean superincumbent upon—see *S. J. D.*

Attempt—(As used in S. 511, I. P. C.) see *In the matter of the petition of R. Mac Crea* I. L. R. 15 All. at p. 111.

Attendants of Public conveyances—Defined, *Bom. Act 6, 1836* S. 36.

Attested—(As used in S. 68 of the Evidence Act and S. 59 of the Transfer of Property Act) is an attestation by witnesses of the execution of the document, and not of the admission of execution.—See *Girindra Nath Mukerji v. Bijoy Gopal Mukerji* I. L. R. 26 Cal. 246; *Abdul Karim v. Sulimun* I. L. R. 27 Cal. at p. 193.

Attesting witness—A person who has seen a party execute a deed or sign a written agreement—*W. L. L.*

A Scribe who is in a position to give evidence as to the execution of the deed is an "attesting witness" within the meaning of S. 59 of the Transfer of Property Act IV. of 1882—*per Banerji and Aikman JJ. in Muhammad Ali v. Jafar Khan*, W. N. 1897, p. 146; *per Burkitt J. in Radha Kishen v. Fateh Ali Ram* I. L. R. 20 All. 532.

Auditor—Defined *Act 2, 1176*, S. 3.

Author—Defined, 49—50 *V. C* 33, S. 11; the originality is not an essential element to constitute an authorship—See *Walter v. Lane*, A. C. (1900) p. 539.

Author of the trust—Defined, *Act 2, 1182*, S. 3.

Avoid—(As used in sch. 11, art. 119, 120 of the Limitation Act 9 of 1871) means to do something in exercise of the right of avoi-

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dance—see *Unnoda Charan Das Biswas v. Mathura Nath Das Biswas*, I. L. R. 4 Cal. 860.

Avulsio or Avulsion—See “Alluvion”

Award—Any words expressive of a decision are an award. Recitals are unnecessary *W. L. L.*

After giving our best attention to the question we must say that the term ‘award’ (as used in S. 54 Land Acquisition Act 10 1870) must include an order for the apportionment of compensation under S. 30th. Though S. 11 relates only to the award of the Collector, there is no reason to suppose that Legislation intended the application of the word to be limited to cases when a final order is made by the Collector, and not to use the same word with reference to the same order, when made by the Civil Court”—*per* Banerji J. in *Bala Ram Bhramatur Roy v. Sham Sundar Narendra* I. L. R. 25 Cal. at p. 530—An award which omits to determine matters referred, or which proposes to determine matter not referred, or which is set indefinite as to be incapable of execution as a decree of Court is for the purposes of S. 525 and 526 of the Code of Civil Procedure no ‘award’—*per* Plowden J. in *Lala Dharam Das v. Ajodhia Prasad and another*, P. R., 1881, No. 70 at p. 159 As used in S. 522 C. P. C. means a legal and valid award—see *Nandram Daluram v. Nem Chund Jadu Chand* I. L. R. 17 Bom. 357; *Bindeshri Prasad Singh v. Janki Pd. Singh* I. L. R. 26 Cal. 482; *Venkayya v. Venkata appogya* I. L. R. 15 Mad. 348; *Kirparam v. Laljit* W. N. 1892 p. 151; P. R. 1894, No. 74.

Away—going crops—Crops sown during the last year of a tenancy but not ripe until after its expiration—*W. L. L.*

Bachh—Not only the record of the shares and their areas but also the distribution of the assessment is a very important matter for the due preservation of the constitution of land-holding communities. The burdens are the Government Revenue, cesses and village expenses, entertaining strangers, keeping up the public *choupal* or meeting place or other public institutions and so forth.—This distribution is called in revenue language the “bachch”—*Baden-Powell's Land System of British India*, 2, Vol. pp. 150 and 151.

Back Freight—“This is the freight payable by the owner of goods which cannot be delivered at their destination, owing to causes for which the shipowner is not responsible, and are consequently conducted by the ship to the place from which they were shipped, or some other suitable place, if their owner gives no instructions to the ship with regard to them and neither receives them nor arranges about their reception”—*E. L. E.*

Bad (in substance)—Is a technical word for unsoundness in pleadings—*W. L. L.*

Badshahi grant—Defined, Beng. Regn. 12 of 1885, S. 26; see Regn. 38 of 1793.

Ba-farzandan—See “Naslan-bad-naslan”

Ba haisyat moujooda—See the observation of Mahmood J. in *Mohammad Salim v. Nibian Bibi*, *I. L. R.* 8 All. 282.

Bail—“A person is said to be admitted to bail when he is released from the custody of officers of the law, and entrusted to the private custody of persons, called his bailee who become bound as sureties to produce him to answer, according to law, to the charge or claim, at a specified date or place”—*E. L. E.*

Bailable offence—Defined, *Act 5 of 1898, S. 4; (1)*

Bailee—Defined, *Act 9 of 1872, S. 148.*

Bailment—Defined, *Act 9 of 1872, S. 148.*

Lord Holt *C. J.* mentions six sorts of bailments *viz*, (1) the bare naked bailment of goods by one man to another to keep for the bailor's use: this is called *depositum*; (2) when goods that are useful are lent to a friend gratis to be used by him: this is called *commodatum*; (3) when goods are left with the bailee to be used by him for hire: this is called *locatio et conductio*; (4) when goods are delivered to another as a pawn to be a security to him for money borrowed of him by the bailor: this is called in Latin *Vadium* and in English a pawn or a pledge; (5) when goods are delivered to be carried or something is to be done about them for a reward to be paid by the person who delivers them to the bailee who is to do the thing about them; (6) when there is a delivery of goods to some body who is to carry them or do something about them gratis.—To loans of things for consumption the name *mutuum* as distinguished from *Commodatum* is given See *Cogg's v. Bernard, I Smith's L. C. at p. 207 (edition, ninth.)*

Bailor—Defined, *Act 9 of 1872, S. 148.*

Bake-house—Defined, *Madras Act I, 1884, S. 3 (ee); Mad. Act 4 of 1884, S. 3 (xxiii)*

Baki-deva—The *gujrati* words *baki-deva* which are of common use (in the Bombay Presidency) in balance accounts import no more than the English words "balance due"—See *Ranchand Das Nathu Bhai v Jaichand Khushal Chand, I. L. R. 8 Bom. 405.*

Bale—"It is an ambiguous word which may mean many things, and therefore it is for a jury to say what it means in a mercantile contract"—*per* Cresswell *J.* in *Gorrisen v. Perrin, (1857) 27 L. J. C. P. 32.*

Ballot—"The primary meaning of the word 'ballot' as its etymology denotes is to record a vote by means of small balls. For the purposes, of election law however, the ballot signifies the system of secret voting which for the protection of voters against intimidation and other external influence, was introduced into Parliamentary and Municipal elections in 1872"—*E. L. E.*

Bank—Defined, 50—*I. V. C.* 11, *S.* 9; *Act* 2, 1876, *S.* 3; *Act* 18, 1891 *S.* 2 (2)

Bank-note—Defined, *Act* 12, 1899, *S.* 489 *A Explanation.*

Banker—A banker is one who receives money in trust to be drawn again as the owner has occasion for it—*W. L. L.* See 50-1 *V. C.* 11, *S.* 9; *Act* 2, 1876, *S.* 3; *Act* 18, 1891, *S.* 2 (2) The relation of a banker and a customer who pays money into the bank is the ordinary relation of a debtor and creditor with a superadded obligation arising out of the custom of bankers to honour the draft of the customers, and that relation is not altered by an agreement by the banker to allow interest on the balances in the bank.—See *Foley. V. Hill* 2. *H. L.* 28.

Bankruptcy—Defined, 57-8 *V. C.* 60, *S.* 742.

In early communities a debtor had to pay his debts to the uttermost farthing and if he could not pay with his property, he had to pay with his person which in societies where slavery prevailed was an asset of some value. In Rome it was not until the time of Julius Ceasor that a debtor became entitled to his discharge on formally giving up any to his creditors—*cessio bonorum*—This *cessio bonorum* makes the commencement of the principle of bankruptcy—See *E. L. E.*

According to Hindu Lawyers, a debt is not merely an obligation but a sin, the consequences of which follow the debtor into the next world—Virihapati says: "He who having received a sum lent or the like, does not repay it, the owner will be born hereafter

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in his creditor's house, a slave, a servant, a woman, or a quadruped."

Bar—Originally the bar or rail which in superior Courts of Record separated the members and officers of the court from the criminals brought before it, and from the suitors, their advocates, and the general public. Such bars to this day exist in the House of Parliament and are there still used for similar purposes.....
.....Advocates as representing the suitor or criminal whose case the court is trying used always to stand at the bar, by the client's side, and then plead his cause. From this last fact the phrase "the bar" has obtained a secondary significance and is used to describe those who practice the profession of advocacy.—
E. L. E.

Barrister—Defined, *Act 10, 1897, S. 3; (4).*

Bargain—"A 'bargain' is only another name for a 'contract'—*per* Howkins J. in *Crossman V. the Queen*, 56, *L. J. Q. B.* 245.

Basivi marriage—See *Q. E. V. Basava, I. L. R.* 15 *Mad.* 75.

Basti—Defined, *Beng. Act 2, 1888, S. 3;*

Basti land—Defined, *Beng. Act 2, 1888, S. 3; Beng. Act 1, 1893, S. 3; (1).*

Batai tenure—The land revenue in former times was paid in kind. This method of payment was known in Hindu times under the name of *battai* or division. In the Mahammadan times *muqsoomah* was the name given to it. See *Phillip's Land Tenures of Lower Bengal. T. L. L.* 1874-75, p. 49.

The 'batai' tenure is very common in Berar. These are the ordinary terms of the 'batai' contract: the registered occupant of the land pays the assessment on it, but makes it over entirely to the *metayer*, and receives as rent half the crop after it has been

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cleaned and made ready for market. The proportion of half is invariable, but the *metayer* sometimes deducts his seed before dividing the grain. He (the sub-tenant) finds seed, labor, oxen and all cultivatory expenses.—*Baden Powell's Land system of British India Vol. III, at p. 371.*

Battalion—Defined, 44—5 V. C. 58, S. 190; (16).

Bazar—Defined, Act 20, 1856, S. 61; *Beng. Act 2*; 1888, S. 3.

Bed (of river)—The term 'bed' when applied to a river which is partly tidal and partly non-tidal such as the Thames, means and includes the soil or ground which is covered by water in the ordinary course of nature the ground over which the water flow or on which it lies, all extraordinary causes whereby the volume of the water is increased or diminished such as unusual floods or draughts, and unusual winds which has a considerable effect on the tidal and particularly the upper tidal portion of the river being excluded. So far as the tide flows and reflows the soil or ground lying below high water mark at ordinary tides included" *per Smith L. J. in Thames conservators V. Smud Dean & Co. 1897, 2 Q. B. pp. 353 & 354.*

Beegah—There was no fixed standard of measurement of land before Akbar's time. It was one of his first reforms. He established as the standard measure of length the *ilaha guz*, a measure not unknown before, but not before accepted as a standard. Having established a standard measure of length he next established as the standard measure of area the *jureeb* or *beegah* of sixty square *guz*. See *Ayeen Akbary Vol. I, 351-355*; See also *Phillip's Land Tenures of Lower Bengal, T. L. L. 1874-75, pp. 67, 68.*

Beegahdam—See "*Dharbachh.*"

Beer—Defined, *Mad. Act I, 1886, S. 3; (10).*

Bees—Bees are classed among animals *ferae naturae*, and therefore like other wild animals are *res nullius* until captured when they become the property of the captor by the *ges gentium*" *E. L. E.*

Before the appellant is called upon to appear and answer—
See *Jogendro Deb Roy, V. Funindro Deb Roy*, 18 W. R. p. 102.

Begining—As used in S. 116 of the Indian Evidence Act, see *Lal Mohammad V. Kallans*, I. L. R. 11 Cal. 519.

Being—As used in a sense similar to that of the ablative absolute, has sometimes been translated as "having been," but it properly denotes a state or condition existent at the time when the conclusion of law or fact is to be ascertained—*S. J. D.*

Believe—As used in S. 414, of the Indian Penal Code "is much stronger than the word 'suspect' and involves the necessity of showing that circumstances were such that a reasonable man must have felt convinced in his mind that the property with which he was dealing was stolen property" per Melvill J. in *Empress V. Rango Muaji*, I. L. R. 6, Bom. 402. See "*Reason to believe.*"

Benami—Sir Frederick Pollock in his Law of Fraud in British India at p. 83, observes: "No civilised system of property law can do without some means of protecting creditors and purchasers in good faith from collusive dealings intended by the parties to them to secure the enjoyments and advantages of ownership without responsibility. For the general nature of what is known here as 'benami' it will suffice to recall the words of my learned predecessor, Mr. Casperz: 'A Benami transaction has been described shortly as one in which the real owner of property allows it to appear in the name of an ostensible owner under a sort of secret trust.'"

The right Hon'ble Sir James W. Colville (while delivering the judgment of their lordships of the Privy Council in *Munshree Buzloor Rahim V. Shumsoonissa Begam*, 11 M. I. A. at p.602. observes: "The habit of holding land *Benami* is inveterate in *India*; but that does not justify the courts in making every presumption against apparent ownership."

Benares Province—See "*N. W. Provinces*."

Bench—Defined, *N. & O. Act 2, 1896, S. 3; (2)*.

Beneficial—"*Beneficial*" & "*Profitable*" are not convertible terms. *S. J. D.*

Beneficial enjoyment—Defined, *Act 5, 1882, S. 4.*

Beneficial interest—Defined, *Act 2, 1882, S. 3.*

Beneficiary—Defined, *Act 2, 1882, S. 3*; the term is nearly equivalent to the term *cestui-que trust*—*E. E. L.*

Bengal—See "*Presidency of Bengal*."

Bengal Act—Defined, *Act 10, 1897, S. 3; (5)*

Bequeath—To leave by will to another. The word is properly applied to personality only, but in a will avails to transmit real property as well as the word *devise*, which is the proper word and *vice versa*—*W. L. L.*

The word "bequeathed" though perhaps not in itself a technical word is primarily applicable only to *property* passing under a Testamentary disposition—*Re Armstrong* 49 L. J. Ch. 53.

Between—When parties join in a legal instrument in different capacities it is expressed as being made "between" the parties. The converse case is a unilateral instrument—*E. L. E.*; See the observations of Jessel M. R. in *Dawes and Tredwell*, 1881, 18 Ch. D. at p. 359.

Beyond the seas—Defined, 44—5 V. C. 58, S. 190 (25); See *Her Highness Rukmaboye V, Lalloobhoy Motichand*, 5 M. I. A. at p. 260.

Bhaiachara villages—(1) Villages in which ancestral shares (probably) once existed, but have since become lost or seriously modified.

(2) Villages in which there never was any scheme of sharing (as far as evidence goes), and in which each cultivator is separately owner of the fields he cleared: these have now become *landlord villages* by reason of the grant of the waste, and the joint responsibility.

(3) Villages in which associations of colonists or others originally allotted the land according to the number of ploughs, or according to the wells and shares in the irrigation.

(4) Villages held by groups of clansmen who have a strong landlord feeling but who never acknowledged Rajas or Chiefs, and had an equal division of land among the original founder instead of any ancestral shares.

The fourth form which is the one *originally* called *bhaiachara* is the most curious. It is difficult to see how in certain clans they acknowledged no Rajas or Chiefs in a *quasi* feudal gradation. The families under their immediate heads and elders, allotted the land from the first, aiming at the equal division; and for that purpose they invented curious artificial land measures, like the "*bhaichara bigha*," when the unit measure was not ascertained plot of given size, but consisted of a lot made up of little vists or samples of the different sorts from the best to the worst so that all might share alike. In Muttra (N. W. P.) artificial measure is spoken of as '*bhaiachak*' i. e. a family lot containing a proportion of each kind of soil. In a *bhaiachara* village the public burdens appear to have been distributed in this way: rent was

taken from any paying tenants and the amount deducted from the total demand of the Government, and the balance was then distributed upon the '*bhaichara bighas*' of the cultivation of the year, whether held by co-sharers or by privileged tenants.—*Baden Powell's land system of British India, Vol. II. pp. 130, 139* (edition 1892).

Bhai band—Ordinarily speaking the term 'bhai band' means brotherhood, kindered, *i. e.* related by blood.—See *Hira Lal V. Ramjas I.L.R. 6 All. at p. 59.*

Bhai karibi—The words 'bhai karibi' cannot be reasonably confined to cousins, but must be construed as meaning *bhaiband* or *bhai log*, so as to include all near relations, with males and females. See *Khuman Singh V. Hardai, I.L.R. 11 All. 41.*

Bhai Nazdiki—The term 'bhai nazdiki' is equivalent to *karabati*—See *Bodi and Kallu V. Musammat Mahtab Bibi, P.R. 1892, No. 131 civil*—*karabati* means not only a male collateral but a near male collateral—*per* Roes and Powell J. J. in *Rajabi Khan & others V. Musammat Kanun and others P. R. 1889, No. 179.*

Bhaoli—One of the main features of the Akbar's land revenue settlement, popularly called Todar Mall's settlement was to substitute a money revenue at a fixed rate for a revenue in kind varying with the crop. But the mode was not obligatory and the cultivator might choose to pay either in kind or in money. There were two modes of ascertaining the Government share when paid in kind: one was called *kankoot* (grain estimate), and the other *bhaoli* called also *buttai* (division). *Kankoot* was to assess the crop upon the ground by estimate and not by actual division. *Bhaoli* was by actual division of the crop when gathered, or by apportioning a certain portion of the land at the sowing for the production of the Government share. These methods have continued with various modifications up to the present day. See *Phillip's Land Tenures of Lower Bengal, T.L.L. 1874—75 pp. 72, 73.*

Bhatrah.—For the meaning of the word as used in the *Mitakshra* and *Mayukh*.—see *Nulji Purshotam*, *I. L. R.*, 24 *Bom.* p. 563 and the cases cited therein. See also *Vinayak v. Lakshmi Bai*, *Bom.*, *H. C. R.* 118.

Bhejbarar.—This system of land revenue is now dying out. The peculiarity in this system is that the revenue burden was periodically re-adjusted, and with it the distribution of lands; and if any shareholder became insolvent his arrears were rateably distributed among the others. Of course if the share was worth anything it would be taken over, but a hopelessly insolvent sharer would be relieved as a matter of common liability.—*Baden Powell's Land System of British India*, Vol. II p. 144.

Bhuhinar.—See *Zemindar*.

Bhuhinbasi.—Defined *Beng. Act* 2, 1869 S. 1.

Bhum.—Defined. *Regn.* 2, 1877, S. 81.

Bid.—An offer to give a price for an article about to be sold at auction.—*W. L. L.*

Bigamy with adultery.—Defined. *Act* 4, 1869. S. 3 (7).

Bill in trade.—An account of merchandise of goods delivered, or of work done and performed &c.—*W. L. L.*

Bill of exchange.—Defined *Act* 15, 1877, S. 3; *Act* 26, 1881, S. 5; *Act* 2 1899, S. 2. (2). A "bill of exchange" as defined in the English law is a *written order or request* by one person to another for the *payment of money at specified time absolutely and at all events*". It is an authority to one person to pay another the sum which is due to the first."

Bill of exchange payable on demand.—Defined *Act* 2, 1899 S. 2 (3).

Bill of lading.—When goods are sent on board a ship the master or person acting for him gives a receipt for them; the master afterwards signs three or four parts of a bill of lading one of which is retained by the captain, another is transmitted to the consignee, the other or others being held by the consignor himself for his own security—See *Brooms Common Law*, p. 501 (6th edition). See Act 1, 1879 S. 3 (3), Act 2 1899, S. 2. (4).

Bilmokta tenure.—In former times the *qanoongo* was remunerated by a commission on the amount of revenue shown to have been collected by him. In some cases a grant of revenue was substituted for this commission. Thus many *qanoongos* or *despandeaks* in Southern India claimed to hold *meerasy*, hereditary villages free of revenue in substitution for their commission or *rasoom* or they claimed to hold at a low fixed rate. Such a tenure was called a *bilmokta tenure*.—See *Philliph's Land Tenures of Lower Bengal*, I. L. L. 1874-75. p. 161.

Binding on all parties.—As used in S. 63. Act 2, 1874, See *Eliza Smith v. The Secretary of State for India*. I. L. R. 3 Cal 340.

Bind over.—The term bind over is correlative to bond, but is used as a legal term only with reference to certain kinds of recognizances or bonds. A person is said to be "bound over" when he enters into a bond or recognizance to the crown to do or abstain from doing some act *E. L. E.*

Birt and Sankalp.—The word *birt* means a grant or endowment to any person for his maintenance or for religious and charitable objects. It also signifies proprietary rights whether acquired by purchase, inheritance or grant, heritable, and transferable, subject to payment of revenue either to Government or to the Raja or Zemindar.—*W. G.*

In the revenue language of Oudh 'birt' was properly a grant (that is for appearance sake); but in latter times (at any rate) it

was always for a consideration. *Sankalp* is a religious grant made for no consideration but the prayers and services of the brahmins, and is irrevocable and made with the firm of giving a blade of sacred *kusha* grass. *Bishenprit* is another religious grant of this nature—*Baden Powell's Land Revenue system of British India, Vol. II p. 239* edition 1892).

Birt zemindari rights—See the observations of Lord Colvile in *Gauri Shankar v. Maharaja of Balrampur*, 6 I. A. p. 1; S. C. I. L. R. 4 Cal. 839; See also *Drig Bijai Singh v. Gopal Dat Pandey*, I. L. R. 6 Cal. 218.

Bishop—Defined, 37-8 V, C. 77, S. 14.

Biswahdar—The proprietor or Zemindar of a village so called in some part of India. He appears to have been the representative of the old headman. See *Philip's Land Tenures of Lower Bengal I. L. L. 1874-75 p. 155*.

Black cap—"It is a vulgar error that the head dress worn by the judge in pronouncing sentence of death is assumed as an emblem of the sentence. It is part of the Judicial full dress and is worn by the Judges on occasions of special state."—*W. L. L.*

Blackmail—"Its proper and usual meaning is a tribute in money, corn, cattle, or other kind levied by free booters on the northern borders of England for immunity from pillage. It is now popularly applied to the offences of the extortion which at common law is confined to extortions by officers under colour of office."—*E. L. E.*

Board—Defined *Act 19, 1873, S. 3 (11), Act 11, 1876, S. 3; Act 17, 1876, S. 2 (ad, Act 20, 1890, S. 12); Act 5, 1886 S. 3 (4) Act 22, 1886 S. 3 (1 A.) (ad. 20, 1890, S. 44) Beng. Act 7, 1878, S. 4; Mad. Act 2, 1886, S. 4; N. W. P. & O. Act 3, 1900, S. 3(1).*

Boarding house—See the observations of Prinsep J. in *In the matter of the High Court's Criminal Procedure I. L. R. 8 Cal. at p. 834.*

Board of Commissioners—Defined, *Beng. Regn. 7, 1822, S. 35,*

Board of Revenue—Defined, *Act 2, 1851, S. 18; Beng. Act 7, 1864 S. 3; Beng. Regn. 7, 1822 S. 35; Beng. Regn. 7, 1828 S. 25 (ad. Act 14, 1881 S. 12); Bom. Act 7, 1865, S. 3; N. W. P. & O. Act 1, 1887, S. 2 (10) ad. N. W. P. & O. Act 1, 1896, S. 2)*—First established by the order from the Director of the East Indian Company in 1785.

Body of deed—The phrase is sometimes used to denote the main or effective part of a deed as distinguished from the recitals—*E. L. E.*

Boiler—Defined, *Act 18, 1882, S. 2; Beng. Act 3, 1879, S. 3; Bom. Act 2, 1891, S. 3, (a); Mad. Act 3, 1893, S. 2; N. W. P. & O. Act 1, 1879-98, S. 2.*

Bombay—See "*City of Bombay.*"

Bombay Act—Defined, *Act 10, 1897, S. 3 (6).*

Bombay city survey—Defined, *Bom. Act 2, 1876, S. 19.*

Bona fide—"The equivalent of this phrase is 'honestly' The correct province of this phrase is therefore to qualify things or actions that have relation to the mind or motive of the individual; and it has no meaning when joined to things or actions common to all mankind though sometimes it is thus used in a figurative but inaccurate sense. A fact completely within physical apprehension can neither be *bona* nor *mala fide*: a mental fact may be either" *S. J. D.* "They (the words *bona fide*) can have no meaning as applied to acts that are not merely believed to be but really are authorized by law"—per Subramanya Ayyar

Offg. C. J. in *Haji Ismail Sait v. Trustees of the Harbour Madras*, I. L. R. 23 Mad. at, p. 418.

Bona fide belief.—"Has been well construed to mean that belief which though erroneous, was excusable in the particular, or in other words that which stood on some reasonable grounds"—per Peel C. J. in *Lang v. Gubbin*, *Taylor & Bell*, p. 228, *u*, per Rattigan J. in *Ganesh Das v. C. F. Elliot*, P. R. 1881, No. 124 at p. 307 (Civil).

Bond.—Defined, Act 15, 1877, S. 3; Act 1, 1879, S. 3 (4); Act 2, 1899, S. 2 (5).

"An instrument under seal, whereby one person becomes bound to another for the payment of a sum of money, or for the performance of any other act or thing. The person thus bound is called the 'obligor' and he whom the bond is given the 'obligee' and this obligation may either be to one or several persons," *Broom's common Law*, p. 289 (6th edition). Garth C. J. in *Gisborne & Co. v. Subal Bowri* I. L. R. 8 Cal. 286, thus observes:—"The definition of a bond in S. 3 (5), Act 18 of 1869 (which corresponds with S. 2 (5) a of Act 2, of 1899) is precisely what we understand by a bond in England and it is an obligation of a different character from a covenant to do a particular fact, the breach of which must be compensated in damages, whether a penal clause is attached to such a covenant or not the remedy for the breach of it is in form and substance, an action for damages; and by S. 74 of the Indian Contract Act, the English rule with regard to liquidated damages is abolished and the plaintiff, in such a suit, has no right under any circumstances to claim the penalty itself as such. He can only recover such compensation, not exceeding the amount of the penalty, as the Judge at the trial considers reasonable, but he is entitled to that compensation whether he proves any actual damages or not. The

remedy upon a *bond* is very different. The plaintiff in the case of a simple bond recovers the sum named in the bond, or in the case of bond conditional for the performance of covenants he recovers the actual damage which he can prove that he has sustained. In either case, not only is the bond a contract of different form and nature from a covenant with a penal clause, but the remedy upon it and the amount recoverable for the breach of it is also different."

"The term 'bond' is a technical term of the English Law from which the terms 'single bond' and 'bond subject to a condition' are borrowed" per Plowden J. in *Nathu and others v. Darbari and others*, P. R. 1879, No. 77. See also the observations of Field J, in *In the matter of the petition of Nasliban*, I. L. R. 8 Cal. at p. 536.

Book.—Defined.—5-6-V. C. 45, S. 2; 7-8 V. C. 12 S. 20; 49-50 V. C. 33, S. 11; *Act* 25, 1867, S. 1; *Act* 3, 1877, S. 3.

Books of account regularly kept in the course of business—

With reference to the expression as used in S. 34 of the Indian Evidence Act 1 of 1872, *Sir R. Couch* while delivering the Judgment of their Lordships of the Privy Council in the *District Commissioner of Bara Banki v. Ram Prasad, President Kayastha Pathshala Allahabad* (I. L. R. 27 Cal. p. 125) thus observes: "Their Lordships are unable to approve of this decision (*viz.* "that books of account regularly kept in the course of business mean books entered up from day to-day or from hour to hour as transaction takes place and *therefore if not so kept are irrelevant*"). It gives a much limited meaning to S. 34. If it were correct, merchants' and bankers' books regularly kept would in many cases be excluded from being used as corroborative evidence. The time of making the entries may affect the value of them, but should

not, if not made from day to day or from hour to hour make them entirely irrelevant."

Booth—A temporary house constructed with boards or boughs or canvas, or a house or shed built of boards, boughs of trees or others light materials for temporary occupation.—See *In re-Nihal Chand I. L. R. 22 Bom. at p. 744.*

Bottomory bond—'Bottomory' is a contract by which in consideration of money advanced for the necessities of the ship to enable it to proceed on its voyage the keel or bottom of a ship *pars pro toto* is made liable for the repayment of the money in the event of the safe arrival of the ship at the destination" *per Lord Stowell, in the Atlas, 1827, 2 Hay Adm. 53.*

Bound—See "*Legally bound*"

Boundary mark—Defined, *Bom. Act 5, 1879 S. 3 (9).*

Boundary dispute—As used in the *Survey Act (Bom. Act 1 1865)* means a contention between two neighbouring land proprietors as when a boundary line or boundary marks has or have been fixed by the Survey Officers. See *Pitambar Dhari v. Sam Bhaji Rao. 8 Bom. H. C. R. 185.*

Breach of the contract—See *Onkar Prasad Bustoorie v. Musammat Foolcoomari Bibi, 14 M. I. A. p. 194.*

Breach of the peace—Defined, *Mad. Regn. 4, 1816, S. 30 (6).*

Breach of trust—Defined *Act 2, 1892, S. 3.*

Bringing up "The words 'bringing up' in common parlance are taken to denote something not covered by 'maintenance' and 'education' which latter word is generally used in a limited sense, the sense I mean, of such instruction as is given at school or by those who occupy position of school-master at home in

that character" per Kekwich *J.* in *re-G. (Infants)*, [1899] 1 *Ch. D.* at p. 722.

British Burma—See *Act* 20, 1886, S. 4.

British Burma Gazette—See *Act* 20, 1886, S. 4.

British Court in a Foreign country—Defined, 55—6 *V. C.* 61.

British Dominions—Defined 5-6 *V. C.* 45 S. 2.

British India—Defined 44-5 *V. C.* 58, S. 190 (21);

52—3 *V. C.* 63, S. 18 (4); *Act* 45, 1860 S. 15; *Act* 16, 1861, S. 21; *Act* 3, 1864, S. 1; *Act* 8, 1864, S. 1; *Act* 10, 1865, S. 3; *Act* 15, 1865, S. 2; *Act* 14, 1886, S. 2; *Act* 25, 1867 S. 1; *Act* 10, 1897 S. 3. (7); *Bom. Act* 3. 1886, S. 3 (5) (*Am. Act* 16 1895-8); *Mad. Act* 1, 1891, S. 3, (8); *N. & O. Act* 1, 1887, S. 2. (13); *Regn.* 8, 1874 S. 1.

British officer—Defined, 33 *V. C.* 14. S. 17.

British possession—Defined, 33-4 *V. C.* 52, S. 26; 33-4 *V. C.* 90 S. 30; 36-7 *V. C.* 88, S. 2, 44-5 *V. C.* 69, *Pt.* 4, S. 39; 4-7-3 *V. C.* 31, S. 18; 48-9 *V. C.* 49, S. 12; 49 50 *V. C.* 33. S. 11; 49 50 *V. C.* 48, S. 27; 52—3 *V. C.* 63, S. 18 (2); *Act* 10, 1897, S. 3 (8)

British slave Court—Defined 36-7 *V. C.* 88, S. 2.

British subject—See "*European British subject*".

Broker—An agent employed to make bargains and contracts between other persons in matters of trade, commerce, and navigation for a compensation commonly called brokerage literally a person who breaks into pieces—*W. L. L.*

Brothel—A brothel is the same thing as a "bandy house" a term which has a well known meaning as used by lawyers and in

Acts of Parliament. In its legal acceptance it applies to a place resorted to by persons of both sexes for the purpose of prostitution.—*per* Willes J. in *Singleton v. Ellison* (1895), *I. Q. B.* at p. 608.

Brother.—Defined, *Act* 1869 S. 21.

Budget.—Defined *Mad. Act* 1, 1884, S. 3 (6).

Budget grant.—Defined, *Bom. Act* 3, 1888 SS. 115 (3), 130.

Building.—Defined, 33-4 V. C. 90, S. 30; *Bom. Act* 6, 1873, S. 3; *Bom. Act* 3, 1888, SS. (3); 300 (2); *Mad. Act* 1, 1884, S. 3 (p.); *Mad. Act* 4, 1884-S 3 (ix); *Mad. Act* 2. 1888, S. 2.

With reference to S. 442 I. P. C., Lindsay J. in *Shera and others v. Empress* (P. R. 1879, No. 25) observes:—"There is no parallel between a mansion in England and the mud hovels of the people concerned in this case. The conditions are absolutely different: the life in England of those who live in mansions and the life of the poor in this country who live in a hovel with an *angan* in front a few feet in area, cannot be compared; no one in England lives in the courtyard, in this country the courtyard or *angan* is as much a dwelling place, and a place for the custody of property as the little room or rooms which may be entered from the '*angan*' the *angan* and the rooms form building, part being covered in or roofed, part being unroofed to suit requirements of the climate. Frequently a dwelling house is built by a poor villager in this fashion. He obtains sun-dried bricks or masses of clay, he builds up four walls, he leaves an opening in one wall and makes a division somewhere in that space. I am not aware that to constitute a building there must be a roof. I believe a walled enclosure entered by a door that may be fastened used as a place for the custody of property, which in this country are often seen, is a

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building [within the meaning of the law and a person committing criminal trespass therein would technically commit house trespass"—See also *Shera and others v. E. I. R.* No. 35 at p. 98 (cr.) *Ibi*.

Building site.—Defined, *Bom. Act* 15, 1879, *S.* 3 (8).

Bull.—See *Hari Mandle v. Jafar*, *I. L. R.* 22, *Cal.* 457.

Bulletin.—An official notice of a public transaction or matter of public importance—an abridged edition of the London Gazette—*W. L. L.*

Bunjer land.—Land was distributed into four classes by the Emperor Akbar (1) *Poolej* land, or land which was cultivated for every harvest, and did not require to lie fallow; 2, *Preowty* land, or land which was allowed to be fallow for a short time to recover its strength; (3) *Checher* land, or land which had lain fallow for three or four years from excessive rain or inundation (4) *Bunjer* land, or land which for the same causes had lain fallow for five years or upwards.—See *Philip's Land Tenures of Lower Bengal*, *T. L. L.* 1874-75 p. 68.

Bunker.—Means *forest dues*.

Buoys and beacons.—Defined, 57-8 *V. C.* 60, *S.* 742.

Burden of proof.—Defined, *Act* 1, 1872 *S.* 101.

Bureacracy.—Government by departments each under a chief a word to describe the system used in an invidious sense—*W. L. L.*

Burglary.—See "*House breaking*".

Burial ground.—See "*Public Muhammadan Burial ground*",

Burma.—Defined, *Act 20, 1886, S. 4* ; *Act 6, 1900 S. 2 (a)*.

Business.—"Anything which occupies the time and attention and labour of a man, *for the purpose of profit* is 'business'—*per* Jessel M. R. in *Smith v. Anderson*, 50 *L. J. Ch.* 43; 15 *Ch. D.* 258.

"There are many things which in common colloquial English would not be called a *business*, when carried on by a single person, which would be so called when carried on by a number of persons. For instance a man who is the owner of a house divided into several floors and used for commercial purpose; *e. g.* offices would not be said to carry on business in the offices as such. But suppose a company was formed for the purpose of buying a building or leasing a house, to be divided into offices and to be let out;—should not we say, if that was the object of the company, that the company was carrying on business for the purpose of letting offices? The same observations may be made as regards a single individual buying or selling land, with this addition that he may make it a *business* and then it is a question of continuity. When you come to an association or a company formed for a purpose you would say at once that it is a *business* because then you have that from which you would infer continuity—*Ibi.* L. Esher M. R. *In re Griffin Ex parte The Board of trade*, 60 *L. J. Q. B.* at p. 237 thus observes:—"In my opinion to say that if only one transaction or two can be proved, then, as a matter of law, it cannot be said that they are transactions in a *business* is too drastic a statement. I think that whether one or two transactions make a *business* depend upon the circumstances of each case.—I take the test to be this if an insulated transaction, which is repeated would be a transaction in a business is proved to have been undertaken with an intent that it should be the first of several transactions that is with the intent of carrying on a business then it is a first transaction

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in an existing *business*. The business exists from the time of the commencement of the transaction with the intent that it should be one of the series. "It has a more extensive meaning than the word trade" *per* Willes J. in *Harris v. Amers*, 35 *L. J. C. P.* 92.

As used in S. 217 of the Indian Contract Act means a continuing business, or the same business as that for which the agent had been agent before.—See *Sirdar Muhammad Hayat Khan v. Babu Das and Andhi Ram*, *P. R.* 1885, No. 49, As used in S. 75 of Punjab Courts Act 1884, See *P. R.* 1898, No. 46 (*Civil*).—See "Carry on business."

But.—A covenant, condition or limitation may be introduced by the word "but" in addition, opposition, or alternately to, or in qualification of a previous covenant, condition or limitation. It has the two meanings of "moreover" and "except," "otherwise" or "without this" and in general is the last formal equivalent of "provided always" expressive of either meaning.—*E. L. E.*

Bye law.—Defined, Act 20, 1891, S. 3 (10).

The word "bye law" meant originally a law made in and for a "by" or "bush" (*i. e.* any fortified town or vill.). It has now attained a wider signification and includes all orders, ordinances, regulations, rules and statutes made by any authority subordinate to Parliament *E. L. E.*

By.—For the difference between "by" and "in" See *Edmonds v. Wough*, 35, *L. J. Ch.* 234.

By Paying.—In para 1, S. 135, Transfer of Property (Act 4 of 1882) means "by paying, or suffering to pay"—See *Devendra Nath Mallick v. Pulin Behari Mallick I.* *L. R.* 123 *Cal.* 715.

Cabinet council.—A private and confidential assembly of the most considerable members of State to concert measures for the administration at public affairs ; first established by Charles I — *W. L. L.*

Calcutta.—Defined, Beng. Act 2, 1884, S. 2 ; Beng. Act. 2, 1888, S; 3 ; Beng. Act. 2, 1891, S. 3, (1) ; Beng. Act 9. 1895 S. 2 (a) Beng. Act 1, 1896, S. 2 (d).—

Calendar.—"Literally the first day in the month in Roman reckoning. The order and series of months, together with the festivals and fasts which make up the year. There are two modes of computing time—by the annual course of the sun, and by the periodical revolutions of the moon. The solar year consists of 365 days, 3 hours, 48', 45", 80", the lunar year of 354 days, 3 hours, 48', 38" 12". The Mohammadans adopt the lunar year. The solar year, calculated by the ancient Egyptians, has undergone various corrections and denominations. The chief of these now in use are the three following:—

(1) The Julian year, so called because Julius Caesar introduced into the Roman Empire the solar or Egyptian year, instead of the lunar year. The Russians and Greeks are the only nations that now use the Julian year. The common Julian year consists of 365 days and the bissextile which returns every four years, of 366 days. This computation is faulty, in as much as it allows 365 days and 6 entire hours for the annual revolution of the sun being an excess every year of 11', 14", 30" beyond the true time. This in a course of ages had amounted to several days, and began at length to derange the order of the seasons. Leo X gave some attention to this, but Gregory XIII caused a new calendar to be drawn up, which is called the (2) Gregorian year, and because the

civil year had gained ten days, he ordered by a bill published in 1581 that these days should be expunged so that instead of the 5th October 1582, it should be reckoned the 15th. The Catholic States adopted this new calendar but the Protestants and the rest of Europe adhered to the Julian, hence the distinction between the old and the new style, which it is necessary to attend in all public acts and writings since 1582. The difference until 1699 was ten days, and eleven from 1700, twelve days must be reckoned during 1800, so that the 1st of June of the old style answers to the 13th of the new.

3. The reformed calendar differs from the Gregorian, as to the method of calculating the time of Easter and other moveable feasts. The Protestants of Germany, Holland, Denmark, and Switzerland adopted this in 1700, Great Britain in 1752, Sweden in 1753, but since 1776, the Protestants of Germany, Switzerland and Holland have adopted the Gregorian. In England the year used to commence on the 25th of the March until 1753, when by the 24th Geo. II c. 54, the beginning of the year was transferred to the 1st of January and 3rd of September 1732, was reckoned the 14th of the same month in order to accommodate the English chronology to the new style".—*W. L. L.*

Calendar month.—"A calendar month is a 'legal and technical term'. In computing time by calendar months, the time must be reckoned by looking at the calendar, and not by counting days"—per Brett L. J. in *Migotti v. Colvill*, 4 C. P. D. 238—See "*Month*"

Calling.—[Founded on 1 cor. VII. 20, *L. Vocatione*, where it stands for the condition or position in which one was when called to salvation; but afterwards often used in the sense of the summons invitation, or, impulse, of God to salvation; or to his service; the inward feeling or conviction of a divine call; the strong impulse to any course of action as the right thing to do]. Hence

ordinary occupations, means by which livelihood is earned, business, trade—See *Murray's New English Dictionary Vol. II.*

The business of investing the funds of a society for interest is a "calling" within the meaning of S. 103 of the Madras Municipal Act 1884—See *Jenningo v. The President Municipal Commissioner Madras I. L. R 11 Mad. 253.*

Canal.—Defined, Act 8, 1878, S. 6 (1), 74; Act 2, 1881, S. 2 (1); Beng. Act. 4. 1876, S. 4 (1); Mad. Act 2, 1890, S. 3.—Canal irrigation is of two kinds: regular canals which flow permanently and those called 'inundation' canals, which only flow when the rivers are in full flood, being swelled by the rains of the monsoon season, or by the melting of snows in the Himalaya, or both, as the case may be—*Baden, Powells Land System of British India Vol. I p. 14.*

Canal officer.—Defined, Act 8, 1873, S. 3 (7); Act 2, 1881 S. 2 (3) *Beng. Act 3, 1876, S. (7); Bom. Act 7, 1879 S. 3 (6).*

Can be—"Means can reasonably be" *per Knight Bruce L. J. in Wicker v. Hume, 21, L. J. Ch. 406.*

Candidate.—"The term in its ordinary signification indicates a person who offers himself for selection to an office; the word embodies in its etymology an interesting allusion to the white robe (*candidatus*=white robed) worn by a candidate for office among the Romans" *E. L. E.*

Candidate for a degree—as used in S. 12 of Act 22 of 1857 to establish the University of Bombay, mean a candidate for the final examination, the passing of which entitles him to a degree. They do not mean a candidate for a degree at any stage of his University career. See *In the Matter of Darasha Rustom Ji Colakawala, I. L. R. 23 Bom. 465.*

Cannon.—Defined, Act 11, 1878 S. 4.

Cannot.—"Includes a legal inability as well as a physical impossibility"
—*S. J. D.*

Cantonment.—In India the permanent military stations are so called—See *Murry's New English Dict. Vol. II.*

Cantonment authority.—Defined, *Act 20, 1887, S. 2 (2); Act 18, 1889, S. 6 (1).*

Capital.—Defined, *Act 11, 1876, S. 3; Act 6, 1882, S. 13. Explanation.* Cotton L. J. in *Guinness v. Land Corporation of Ireland* (52 L. J. Ch. at p. 183) observes "the capital of the company is to be the fund which is to regulate and determine the liability of the members in the event of the company being wound up. It follows that whatever has been paid by a member can not be returned to him.

Uncalled capital—"On any share in the money which its holder is bound to the company to pay to it when required by the proper authority"—per Lendlay L. J. *In re. Pyle Works*, 44 Ch D. 583,

Capital punishment.—In English law the capital punishment means the penalty of death inflicted in pursuance of Judicial sentence, it being a cardinal of the constitution that no one is to be put to death without being brought to answer in due process of law—*E. L. E.*

Capital stock.—Defined, *Act 11, 1876, S. 3.*

Cargo.—"Cargo" is a word with different meanings. It may mean one thing in a charter party, another in a policy, another in a contract of sale. It is a word susceptible of different meanings in different contracts, and must be interpreted with reference to the contract"—per Lord Bramwell and Sir Barnes Peacock in *Colonial I. C. of New Zealand v. Adelaide, I. C.*, (1886), 12 App. Cas. 128.

Carriage.—Defined, *Act 4, 1884, S. 4 (11); Act 11, 1886 S. 3 (9); Beng. Act. 1876, S. 6 (1); Beng. Act 2, 1888, S. 3; Mad. Act 3,*

1879, S. 3.

Carrier—Defined, *Mad. Act. 8, 1878, S. 3.*

Carry on.—"The phrase 'carry on' implies a repetition or series of acts"—*per* Brett L. J. in *Smith v. Anderson*, 50 L. J. Ch. 52
carry on business—Scotland C. J. in *Chinnammal v. Talukannatammal & others*, [3 *Mad. H. C. Rep. pp. 147, 148*] observes: "It could not have been intended (as observed in the Judgment of the Court in *Subbaraya Mudali and others v. the Government* 1 *Mad. H. C. Rep. 286*) that the words 'carry on business' were to be understood in their most general sense. Giving proper effect to the other words of the provision, the section (12 of the L. P.), I think, requires that the defendant should, at the time of the commencement of the suit, carry on within the local limits of the Court's Jurisdiction some independent regular business in person, as in the case of *Mitchell v. Hender*, (23 L. J. Q. B. 273); or at an office or other fixed place of business (See *Rolfe v. Learmouth*, 14 Q. B. 196) either personally, or by clerks, or servants employed by the defendant and conducting the business under his control and in his individual or partnership name". This case was followed by the Bombay High Court in *Khinji Chaturbhuj v. Sir Charles Forbes, Baronet*, 8 *Bom. H. C. Rep. p. 102* and *Kesowji Damodar Jairam v. Khinji Jairam* 1. L. R. 12 *Bom. 507*.

Carrying on business at a place by a commission agent is not carrying on business within the jurisdiction of a court where the commission agent resides—*per* Sir Barnes Peacock and Mitter J. in *Gopi Mohan Roy v. Protap Chunder Roy*, 11 W. R. 530.

Lord Morris in *Goswami Shri 108 Shri Girdharji Shri Govardhanji Maharaj v. Shri Goverdhanlalji Girdharji*

Maharaj. (21 I. A. at p. 15) observes: "The phrase 'carry on business' as has been often said, is a very elastic one and almost incapable of definition. The tribunal must in each case look to the particular circumstances".

A person who receives presents or offerings and keeps accounts does not *carry on business*—*Farran J. in Shri Goswami v. Shri Govardhanlalji*. (I. L. R. 14 Bom. at p. 553) remarks: A man who receives presents or offerings and reckons and keeps an account of them is not, in ordinary language, considered to *carry on business*, even though he may be a man held in reverence by his devotees as of super human holiness or as containing in himself an incarnation of the deity. The fact of the offerings being on so large a scale and coming from such an extended area that the defendant is obliged to employ servants to collect and keep an account of them, does not alter the character of the defendant's source of livelihood, which remains notwithstanding its magnitude eleemosynary.' The same view was taken by *Telang J. in Goswami Shri Girdhariji v. Shri Govardhanlalji* I. L. R. 18 Bom. 290.

As to the meaning of the words 'carry on business' in their application to the Railway companies and other corporate bodies having numerous stations and offices throughout the country see *Shiel v. the Great Southern Railway Company*, 30 L. J. Q. B. 331.

In *Murugesu Chetti v. Annamalai Chetti* (I. L. R. 23 Mad. at p. 472) *Subramania Ayyar* and *Davies JJ.* express a doubt as to whether the member of a joint Hindu family can be said to be *carrying on business* within the meaning of S. 17 of the Code of Civil Procedure. It is observed in the Judgment that "to bring a principal within the operation of S. 17 the person acting as the agent within the jurisdiction should be an agent in

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the strict and correct sense of the term". See also *Ex parte Breull* ; *In re Bowie*, *L. R.* 16 *Ch. D.* at p. 487.

Carry on business for gain.—As used in Sch. A of the City of Madras Municipal Act of 1884, see *Madras Equitable Assurance Co. v. the President Municipal Commissioner Madras*. *I. L. R.* 11 *Mad.* 238.

Cart—Defined, *Beng. Act* 5, 1876, *S.* 6 (2) ; *Beng. Act* 3, 1884, *S.* 6 (2).

Cart-stand—A place is not necessarily a 'cart-stand' within the meaning of *S.* 189 of District Municipalities Act 4 of 1884. (Madras) merely because one or two carts stand there. See *Q. E. v. Ayya Kanum Mudali*, *I. L. R.* 21 *Mad.* at p. 295.

Case—The word "case" in *S.* 622 of the Code of Civil Procedure "is used in its broadest and most ordinary sense including all adjudications which might constitute the subject of appeal or revision subject to the rules governing the exercise of the appellate and revisional jurisdictions respectively; and it comprehends adjudications under *S.* 407 which fall under the same general category of adjudications as the rejection of an ordinary plaint under *S.* 53 or *S.* 54"—per Mahmood J. in *Chatterpal Singh v. Raja Ram*, *I. L. R.* 7 *Al.* 661 ; "may be wide enough to include interlocutory orders"—per Sargent C. J. in *Motilal Kashibhai v. Nana*, *I. L. R.* 18 *Bom.* at p. 37 ; per Tottenham and Norris JJ. in *Dhapi v. Ram Prasad*, *I. L. R.* 14 *Cal.* 768, "it does not necessarily in every instance mean the whole case, but may mean a particular branch of a case for which an independent remedy or different procedure is provided in the Code and may include an interlocutory order not falling under *S.* 591—" per Chatterji J. in *Pandit Rama Kant v. Pandit Rajdeo*, *P. R.* 1897 No. 60. See also *Q. E. v. Nanaji*, *I. L. R.* 14 *Bom.* at p. 382.

As used in S. 4, sub-section 2 of Act 8 of 1890—See *Sham Kuar v. Mahanand Sahar*, I. L. R. 19 Cal. at p. 307.

Cash.—This is a stricter term than money—*S. J. D.* The Promisory notes payable to order, long annuities and Columbian bonds were held not to be considered as *cash*, or money commonly so called *cash*—See *Bealer v. Crisford*, 13 L. J. Ch. 26.

Caste.—As used in S. 21 of Regulation 2 of 1827 is not necessarily confined to Hindus, but comprises any well defined native community governed for certain internal purposes by its own rules and regulations—See *Abdul Kadir v. Dharma*, I. L. R. 20 Bom. 190.

“Caste, in the days of the *Vedas* (B.C. 2000 to B.C. 1400) was an ‘ethnological distinction’. There were then two great castes, the *Aryas*, or the fair complexioned new settlers, and the *Dasyus*, sometimes called *Sudras*, or the dark-complexioned aborigines. *Varma*, literally colour, was then a strictly appropriate word for caste. Gradually, as the *Aryas*, according to their occupations, divided themselves into the three classes of priests warriors and traders or agriculturists, there arose the fourfold division into *Brahmans*, *Kshatriyas*, *Vaisyas* and *Sudras*”—*Goordas Banerji's Marriage and Stridhan* p. 68 (edition 1896) See also *Max Muller's chips from a German Workshop*, Vol. 11 p. 323.

Catching bargain.—“Any transaction entered into by a person, who from his youth, ignorance, or the pressure of his necessities is unable to make a fair bargain with the other party, where the transaction is grossly one-sided and unfair by reason of such incapacity”—*E. L. E.*

As to how far the Courts in India can interfere in such cases Mr. Justice Mahmood [*in Lalli v. Ram Prasad*, I. L. R. 9 All. at p. 77] remarks :—“We in India are no doubt bound by the rules of the stationery law; but to use the language of Mr. Justice

Story, Law, as a science, would be unworthy of the name, if it did not to some extent provide the means of preventing the mischiefs of improvidence, rashness, blind confidence, and credulity on one side, and of skill, avarice, cunning, and a gross violation of the principles of morals and conscience, on the other. There are many cases in which Courts of equity interfere upon mixed grounds of this sort. There is no more intrinsic sanctity in stipulations by contract, than in other solemn acts of parties, which are constantly interfered with by courts of equity upon the broad ground of public policy, or the principles of natural justice.The whole system of equity jurisprudence proceeds upon the ground, that a party having a legal right, shall not be permitted to avail himself of it for the purposes of injustice, or fraud, or oppression, or harsh and vindictive injury".

The cases of Fraud other than actual fraud (*dobus malus*) as enumerated by Lord Hardwicke V. C. (in *Chesterfield v. Janseen*, 1 *White Tudor's Leading Cases in Equity*, 4th edition 541) is thus summarised in *Story's Equity Jurisprudence*, S. 188 11th edition :—

"*Secondly* : It may be apparent from the intrinsic nature and subject of the bargain itself ; such as no man in his senses, and not under delusion, would make on the one hand, and as no honest and fair man would accept on the other ; which are inequitable and unconscientious bargains, and of such even the common law has taken notice.

"*Thirdly* : Fraud which may be presumed from the circumstances and conditions of the parties contracting and this goes further than the rule of law, which is, that it must be proved, not presumed. But it is wisely established in the Courts of Chancery, to prevent taking surreptitious advantage of the weakness or necessity of another, which knowingly to do is equally against conscience, as to take advantage of his ignorance".

See "Fraud"

Cattle—Defined. *Act 13, 1856, S. 2; Act 24, 1859, S. 1; Act 5, 1861, S. 1; Act 1, 1971, S. 3; Act 13, 1877, S. 7, Act 7, 1878, S. 2; Act 19, 1881, S. 3; Act 9, 1890, S. 125, (5); Beng. Act. 2, 1866, S. 51; Beng. Act 4, 1866, S. 3; Bom. Act 7, 1867, S. 1; Bom. Act 4, 1190, S. 3 (f); Mad. Act 5, 1882, S. 2; Mad. Act 3, 1888, S. 3; Regn. 1, 1874, S. 2; Regn. 6, 1874, S. 2; Regn. 6, 1887, S. 2, (6); Regn. 5, 1890, S. 2 (9); Regn 7, 1891, S. 3 (6).*

Cattle doing damage to public plantation—see *Act 7, 1878, S. 69; Act 19, 1881, S. 68; Mad. Act 5, 1882, S. 57; Regn. 6, 1887, S. 66; Regn. 5, 1890; S. 1; Regn. 7, 1891, S. 66; Regn. 6, 1893, S. 34.*

Cause.—"Is not a technical word signifying one kind or another, it is *causa jurisdictionis*, any suit, action, matter or other similar proceeding competently brought before, and litigated in, a court"—*per Selbourne L. C. in Re Green, 51 L. J. Q. B. 40.*

Cause of action.—"The grounds or the *media* upon which the plaintiff asks the court to arrive at a conclusion in his favour (*per Lord Watson while delivering the Judgment of their Lordship in Chand Kuar v. Partab I. L. R. 16 Cal. at p. 102; s. c. L. R. 15 I. A. 156*)—It has no relation whatever to the defence which may be set up by the defendant, nor does it depend upon the character of the relief prayed for by the plaintiff"—*ibi.*; nor can it as stated in the plaint be altered by the result of the suit (*per Shepherd and Subramania Ayyar JJ. in Ittappan v. Manaviama, I. L. R. 21 Mad. at p. 157.*

The phrase 'cause of action' in its comprehensive sense includes the entire set of facts which gives rise to an enforceable

claim, *ie.*, the right and its infringement.—(Macpherson and Banerji JJ. in *Harimoni Dassi v. Hari Churn*, *I. L. R.* 22 *Cal.* at p. 839); [*cf. Illappan v. Manavikrama, Sup.*]. So Lord Esher, M. R. in *Read v. Brown*, *L. R.* 22 *Q. B. D.* 128 defined a 'cause of action' as "every fact which it would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of the court. It does not comprise every piece of evidence which is necessary to prove each fact, but every fact which is necessary to be proved"—This definition was adopted by Edge C. J. in *Murti v. Bhola Ram* *I. L. R.* 16 *All.* 165, *F. B.* and in *Salima Bibi v. Shah Mohammad*, *I. L. R.* 18 *All.* 131 *Sheo Prasad v. Lalit Kuar*, *ibi.*, 403 and *Rajjo Kuar v. Debi Dyal ibi.*, 432, was declared to hold good throughout the Code of Civil Procedure. In *Harimoni v. Hari Churn, Sup.*, the Calcutta High Court, however, dissenting from *Lingamal v. Chirna*, *I. L. R.* 6 *Mad.* 239, and *Nusserwanji v. Gordon*, *I. L. R.* 6 *Bom.* 266 held that in S. 26 C. P. C. the expression was to be taken in its limited sense so as to include the facts constituting the infringement of the right, but not necessarily also those constituting the right itself. *Smurthwaite v. Hannay*, [1894] *A. C.* 494 referred to; *Fakirappa v. Rudruppa*, *I. L. R.* 16 *Bom.* 119 followed.). In the actual judgments in *Murti v. Bhola Ram, Sup.*, also, the cause of action, which was more or less indentified with the right of suit, seems to have been limited to the infringement of the plaintiff's right by the passing of an adverse order" *see esp. pp.* 170—1, 175, 176). *See also Desouza v. Cole*, 3 *M. H. C. R.* 384. *Explanation 3 to S. 17 C. P. C.* also shows that the words 'cause of action' in that section do not necessarily mean the whole cause of action.

As to the cause of action in a suit for ejectment see *Ishan Chunder v. Rameswar*, *I. L. R.* 24 *Cal.* 831. *D. Mitter J.*

distinguishes between 'title' and 'cause of action' in *Dudsar v. Shakir* 15 W. R. 168 at p. 169,

As to the cause of action in cases of breach of contract see S. 17 Act 14 of 1882. For a suit for restitution of conjugal rights see *Lalitagar v. Suraj*, I. L. R. 18 Bom. 316.

Caveat.—Is a warning in writing lodged in the principal probate registry, or in a district probate registry giving notice to the registrar not to issue any grant or to take any step in reference to the personal estate of the deceased named in the writing, without notice being given to the party, or to the solicitor of the party who has lodged the caveat—*E. L. E.*

Caveat Emptor.—In general when an article is offered for sale, and is open to the inspection of the purchaser the common law does not permit the latter to complain that the defects, if any, of the article are not pointed out to him. The rules are, *caveat emptor* and *supplex commendatis non obligat*—See *Benjamin on Sale*; 4th edition. p. 404.

Cellular confinement.—Defined, Act 9, 1894, S. 46 (10)
Explanation.

Ceremonial (International law).—Formalities of courtesy observed in dealings between states and their official representatives. Though hardly entitled to the dignity of being called international law, ceremonial has always played a very important part in the relation of states with each other, and care is always taken to have as little opening as possible for discussion in such matters—*E. L. E.*

Certain.—Defined, Act 26, 1881, S. 5.

Certain Act.—As used in S. 144 of the Criminal Procedure Code. (Act 10, 1882)—See *Ahayswari Debi v. Sidheswari Debi*, I. L. R. 16 Cal. 80.

Certificate officer.—Defined, Beng. Act 1895, S. 4 (2).

Certify.—"The usual meaning of 'certify' does not require anything written : Otherwise why should parties ever expressly stipulate as to certifying in writing"—per Byles J. in *Roberts v. Watkins* 32 L. J. C. P. 291.

Certified Copy.—Defined *Act* 1, 1872, S. 76 ; *Act* 18, 1891, S. 2 (8).

Cesses.—Sir George Campbell in the Administration Report, for 1872-73 remarks:—"The agricultural cesses consist of various dues and charges levied from the ryots in addition to the regular rent and generally in proportion to the rent. The Permanent Settlement Regulations positively prohibited all such duties strictly confining the Zemindars to the customary rent proper, but in this as in other things these laws have been wholly set at defiance in modern times. The modern Zemindar taxes his ryots for every extravagance or necessity that circumstances may suggest, as his predecessors taxed them in the past. He will tax them for the support of his agents of various kinds and degrees, for the payment of his income-tax and his postal cess, for the purchase of an elephant for his own use, for the cost of the stationery of his establishment, for the cost of printing the forms of his rent receipts, for the payment of his lawyers. The milkman gives his milk, the oilman his oil, the weaver his clothes, the confectioner his sweetmeats, the fisherman his fish. The Zemindar levies benevolences from his ryots for a festival, for a religious ceremony, for a birth, for a marriage ; he exacts fees from them on all changes of their holdings, on the exchange of leases and agreements, and on all transfers and sales ; he imposes a fine on them when he settles their petty disputes, and when the police or when the magistrate visit his estates ; he levies blackmail on them when social scandals transpire ; or when an

offence or an affray is committed. He establishes his private pound near his cutchery, and realizes a fine for every head of cattle that is caught trespassing on the ryot's crops. The abwabs, as these illegal cesses are called, pervade the whole Zemindari system".

"These abwabs were imposed by successive rulers: and were the means by which the state appropriated what share it could of the improved condition of the land, or of the increased revenue which the Zemindar had contrived to wring out of the ryots"—*Phillip's Land Tenures of Lower Bengal*, T. L. L. 1874-75, pp. 122, 123 and 176.

Mr. John Stuart Mill in his *Political Economy* Bk.ii, ch. iv.. S. 2 remarks:—"..... But when an old and purely Hindoo principality falls under the dominion of the British Government, or to the management of its officers, and when the details of the revenue system come to be enquired into, it is usually found that through the demands of the great landholder, the state have been swelled by fiscal rapacity until all limit is practically lost sight of, *it has yet been thought necessary to have a distinct name and a separate pretext for each increase of exaction ; so that the demand has sometimes come to consist of thirty or forty different items in addition to the nominal rent.* This circuitous mode of increasing the payments assuredly would not have been resorted to if there had been an acknowledged right in the landlord to increase the rent. Its adoption is a proof that there was once an effective limitation, a real customary rent: and that the understood right of the ryot to the land, so long as he paid rent according to custom, was at some time or other more than nominal."

See the observations of Campbell J. in *Thakooranee Dassi*. v.

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Bishesher Mukerji, *B. L. R. Sup. Vol. 256* (see *Abwab's ante.*)

Abwab—See *Ante p. 3*; See also *Jeetoolab Permanik v. Jagendro Nath Roy* 22 *W. R.* 12 (28 April 1874).

Batta, Poonia Nazrana—See *Omacharan v. Musammatt Waiz Bibi*, 1857, *S. D. A. Cal.* 1854 (31 Dec. 1857.)

Bhet and Khuran—See *Nath Prasad v. Rampattan and others*, *W. N.* 1882 p. 28.

Cess on cotton and cotton seeds—See *Goswami Shri Purshotamji Maharaj v. B. Robb*, *I. L. R.* 14 *Bom.* 398 *P. C.*

Chandu—See *Petition No. 478 of 1851*, (13 Jan. 1852) *S. D. A.* 1852 *Cal.* p. 4.

Charge of grazing cattle—See *Bhageerath Shikdar v. Ram Narayan Mundar*, 9 *W. R.* 299 (20 Feb. 1868).

Charge on account of difference between sicca and Company's rupees—See *Rocha Bam v. Nago Dass*, 2 *N. W. P.* 92, (21 Feb. 1870).

Choukidari and Harkari—See *Hushmat Ali v. Seeta Ram*, 2 *Agra* 336 (6 March 1867).

Choukidari cess—See *Kasim Ali v. Shadee*, 3 *N. W. P.* 21 (14 Jan. 1871).

Collection charges—See *Mohamed Fayez Chowdhry, v. Jamoo Gazee*, *I. L. R.* 8 *Cal.* 730.

Delivery of so much gur on every maund—See *Sonnum v. Ilahi Bux*, 7 *W. R.* 453 (6 May 1867).

Mahmanee Nuzrana Sayer—See *Raja Madho Singh v. Raja Bidyanand*, 1848, *S. D. A.* p. 442 (11th May 1848).

Pardhi or festival cess—See *Kamta Kant v. Kannoo Mhd.* 11 *W. R.* 395 (26. 4. 1869); *Shekh Basharat Ali v. Sital*

Misra, S. A. No. 201 of 1868 (25 Jan. 1869), 1 N. W. P. 37.

Parjote—See *Gulam Jeelani v. Mudone*, 1851, N. W. P. S. D. A. 445, (31 Dec. 1851).

Peri—See *Debi Parsad v. Puran Rai*, 1862, N. W. P. S. D. A. 108 (10 Feb. 1862); *Bhagwan Singh v. Musammatt Laloo*, 1856, N. W. P. S. D. A. p. (236 18 April 1865).

Purbhika or present for the Zemindar on the Unnoprashan—See *Nobin Chander Roy v. Gooroo Govind Surmah*, 14 W. R. 447 (9 Decr. 70).

Right to levy a certain sum on the occasion of second marriage of a widow of a certain caste—See *Lala and another v. Hira Singh*, I. L. R. 2 All. 49.

Right of riparian owners to levy "Kuntagra" or a charge imposed upon boatmen for driving stanchions or pegs into the river bank for the purpose of attaching their boats thereto—See *Dhunput Singh v. Denobhundu Saha and others* 9 C. L. R. 279.

Rusum kuzza—See *Luckhee Debkea v. Shekh Alta*, 1852, S. D. A. Cal. 552 (23 June, 1852).

Salami Pachguna Chokidari—See *Bhoor Pashan v. Khem Chand*, 1857, S. D. A. Cal. p. 1508 (26 Oct. 1859.)

Suit for a declaration of a Zemindar's right to half the fruit and timber of certain groves—See *Akbar Khan v. Sheo Ratan*, I. L. R. 1 All. 37? See also *Ablakh Roy v. Ram Saran Singh*, A. W. N. 1892 p. 10.

Weighing dues—See *Khyrat Ali v. Mohammad Yaseen*, 1 Agra 207 (18 Sep. 1866).

Zabitabatta—See *Radhamohan v. Ganga Pershad*, Mec. 7 S. D. A. 142 (16 Dec. 1843).

Cess year.—Defined, *Beng. Act* 3, 1885, S. 5.

Cestui-que trust.—The word ‘beneficiary’ is nearly equivalent to the term *cestui-que trust*, which owing to its cumbrousness and inexpressiveness is being superseded in modern law by the former—*E. L. E.*

Chairman.—Defined, *Beng. Act*. 9, 1890, S. 171 ; *Madras Act*. 2, 1890, S. 3.

Chak.—The term is often applied to a group of land forming a whole village or hamlet or definite estate—See *Baden Powell's Land system of British India*, Vol. II p. 230.

Chakdar.—For the difference between ‘chakdar’ and a ‘pattidar’ See—*Balwant Singh v. Subhan*, *I. L. R.* 10 *All.* 108.

Chakran tenures.—In former times there used to be grants of land or revenue for the support of servants of various kinds. These resemble the conditional Jageer, the holder being bound to perform certain services as the condition of retaining the privileges granted. Holdings of this kind are frequently called *service tenures* or *chakran tenures*—See *Phillip's Land tenures of Lower Bengal* p. 208 (*T. L. L.* 1874-75).

Chambers, in.—The term “in camera”, “in chambers” is now used with reference to legal proceedings held privately from which the public are excluded—*E. L. E.*

Lord Coke (in 1669) observes : “The judges are not judges of chambers but of courts, and therefore in open court, when parties, counsels and attornies attend, ought orders, rules, awards, and judgments, to be made and given, and not in chambers and other private places”. Lord justice Wilmot says : “A doubt has been rather hinted at than made as to the legality of orders made by judges at their houses or chambers. When the practice first began I cannot find out.....but whenever it began it stands upon too firm a basis to be now shaken.....and it is now become

You cannot pry into the secrets of a man's conduct ; if you could do so, there might be many circumstances which would palliate the cohabitation"—See *Leader v. Yell* 33 L. J. M. C. 23.

Charge.—Defined, S. 100. Act 4, 1882 (Am. Act 2, 1900) " The word 'charge' is used in various senses, the original signification being a burden or load. Thus it may mean an obligation or a liability to pay money laid upon a person or estate"—*E. L. E.* as contradistinguished from '*lien*' it denotes a result of the act of parties, while the word '*lien*' is restricted to a liability arising by statute. A charge in strictness not only empowers its possessor in many cases to hold the property charged, if in his possession, but also gives him the right to come into court and sue, actively for the satisfaction of his claim. A '*lien*' strictly is neither a *jus in re*, nor a *jus in rem*, but is simply a right to possess and retain the property until some charge attaching to it is paid or discharged—per Young J. in *Kishen Lal v. Ganga Ram*, I. L. R. 13 All. at pp. 36 and 39.

"It seems to me that the words 'charge,' the word 'bind' and the word 'oblige' whatever may be the ordinary use by conveyancers of one or the other, in the English language and in legal language mean the same. To 'bind' means to charge, to 'charge' means to bind, 'oblige' means to charge or bind—all these words are absolutely, in my opinion, synonymous"—per James L. J. in *In re Florence Land and Public Works Company*, 10, Ch D. at p. 546.

In the Criminal Procedure Code generally the word "charge" is used as the statement of a specific offence and not as indicating the entire series of offences of which a prisoner is accused. There is nothing in the Code to indicate that the word is to have a different construction in SS. 226, 227 from what it has in other sections (so held by Sargent C. J. and Bayley J. Scott J. *diss.*)—See

Q. E. v. Appa Subhana Mendu, I. L. R. 8 Bom. 20 ; in S. 65 of the *Bengal Tenancy Act* (8 of 1885) is not such a charge as that defined by S. 100 of the *transfer of Property Act* (4 of 1882)—*per* Norris and Beverley JJ. in *Fotick Chunder Dey Sircar v. E. J. Foley*, I. L. R. 15 Cal. 493 ; a statement to the police of a suspicion that a particular person has committed an offence is no 'charge' within the meaning of S. 211 of the *Indian Penal Code*—*per* Pontifex and Mitter JJ. in *In the matter of Bramanand Bhattacharji*, 8 C. L. R. 233 ; the word 'charged' as used in S. 218, I. P. C. is not restricted to the narrow meaning of 'enjoined by a special provision of law'—*per* Rampini and Pratt JJ. at p. 151.

Chargeable—Defined, Act 1, 1879, S. 3 ; as used in proviso (1) of S. 34 of the *Stamp Act* of 1879—See *Narayanan Chetti v. Karup Puthan*, I. L. R. 3 Mad. 251 ; "it has substantially the same meaning as payable"—*per* Hawkins J in *Direct Spanish Telegraph Co. v. Shepherd*, 53 L. J. Q. B. 420.

Charity.—"The word 'charity' in its widest sense denotes all the good affections, men ought to bear towards each other ; in its most restricted and common sense *relief to the poor*"—*per* Sir William Grant M. R. in *Morice v. the Bishop of Durham*, 9 Ves, at p. 405 ; "as defined in the courts of equity is not equivalent to the thoroughly Hindu word *Dharma* which implies the performance of acts considered meritorious in the Hindu religion, many of which could by no latitude of construction be brought within the term 'charity'"—*per* Sir Perry C. J. while delivering the judgment in the *Advocate General v. Damothar Perry's oriental cases* at p. 530 ; "it (*dharma*) appears to be as wide as the words philanthropy or piety, or charity, in its untechnical sense"—*per* Farran C. J. in *Vindravan Das v.*

Cursondas I. L. R. 21 Bom. at p. 666. See also Pranjiwandas Tulsidas v. Devkunvarbai, 1 B. H. C. R. 76.

“‘Charity’ in its legal sense comprises four principal divisions: (1) trust for the relief of poverty; trust for the advancement of education; (3) trust for the advancement of religion; (4) trust for other purposes beneficial to the community, not falling under any of the preceding heads”—*per* Lord Macnaughton in *Commissioner for special purposes of Income Tax v. Pemsel* [1891] *App. cas.* at p. 58. See *Dharma*.

Charitable.—“I conceive that the real ordinary use of the word ‘charitable’ as distinguished from any technicalities whatsoever always does involve the relief of poverty”—*per* Lord Halsbury L. C. in *Commissioners for special purposes of Income Tax v. Pemsel*, [1891], *App. Cas.* at p. 552.

Charitable purposes.—Defined, *Act 6, 1890, S. 2.* The words *charitable purposes* have acquired a technical meaning in the Presidency of Bombay and in that sense they include all purposes within the meaning of statute 43 *Eliz C. 4*—*per* Sargent C. J. in *the University of Bombay v. the Municipal Commissioner for the city of Bombay, I. L. R. 16 Bom. at p. 227*; a trust for a Hindu idol and temple is to be regarded as one created for ‘charitable purposes’ within the meaning of S. 539 of the Code of Civil Procedure (*Act 14, 1882*)—*per* West and Birdwood, JJ. in *Manohar Ganesh Tambekar v. Lakshmiram Govindram, I. L. R. 12 Bom. 247*; as used in the Mohammadan Law the term “must not be construed to mean ‘charity to the poor’ irrespective of the endower and his descendants”—*per* Amir Ali J. in *Bikani Mia v. Shuk Lal Poddar, I. L. R. 20 Cal. at p. 139.*

“In the construction of a deed of *wakf*, the words ‘charitable and ‘religious’ must be taken in the sense in which they are

understood in Muhammadan Law"—per O'Kinealy and Amir Ali JJ. in *Meer Mahomed Israil Khan v. Sashti Charan Ghose*, I. L. R. 19 Cal. 412; See also *Kaleloola Sahib v. Nuseeruddin Sahib*. I. L. R. 18 Mad. 201.

Chaukidar.—Defined, N. and O. Act 3, 1892, S. 2 (8).

Chaukidari Chakran lands.—Defined, Beng. Act 6, 1270 S. 1.

Chaukidari fund.—Defined, Beng. Act 6, 1870, S. 23.

Chavdi.—Bom. Act 1, 1889, S. 4 (c).

Cheating.—Defined, Act 45, 1860, S. 415.

Cheating by personation.—Defined, Act 45, 1860, S. 416.

Chemist.—"A chemist (as distinguished from 'apothecary') is one who sells and prepares drugs prescribed by others, he does not prescribe himself"—E. L. E.

Cheque.—Defined, Act 1, 1879, S. 3; Act 26, 1881, S. 6.

Cheque crossed generally.—Defined, Act 26, 1881, S. 123.

Cheque crossed specially.—Defined, Act 26, 1881, S. 124.

Chief.—Defined, Act 15, 1888, S. 2 (2),

Chief Commissioner.—Defined, Act 3, 1867, S. 1; Act 24, 1870 S. 2; Regn. 4, 1872, S. 1; Regn. 3; 1890, S. 96 (1) Regn. 3: 1893, S. 1.

Chief controlling revenue authority.—Defined, Act 1, 1879, S. 3, (7); Act 3, 1879, S. 7; Act 18, 1888, S. 4.

Chief customs authority.—Defined, Act 8, 1878, S. 3, (a); Act 2, 1896, S. 3 (2).

Chief customs officer.—Defined, Act 8, 1878, S. 3 (b); Act 10, 1887, S. 5, (6); Act 14, 1895, S. 5 (4).

Chief forest officer.—Defined, Regn. 5, 1890, S. 2 (4).

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Chief justice.—Defined, *Act* 15, 1865, S. 2; *Act* 10, 1882, S. 4, (J); *Act* 14, 1891, S. 3.

Chief officer of customs.—Defined, 57 8 V. C. 60 S. 742; *Mad. Act* 2, 1886, S. 3 (a).

Chief revenue authority.—Defined, *Act* 18, 1888, S. 4; *Act* 12 1896 S. 3 (a).

Child and children.—Defined, *Act* 13, 1855, S. 4; *Act* 10, 1865, SS. 86, 87; *Act* 21, 1870, S. 6; *Act* 15, 1881, S. 2; *Bom. Act* 1, 1872, S. 6; *Mad. Act* 4, 1896, S. 2.

The word "children" in S. 4, para 9 of the Punjab Civil Code refers only to male children—See *Musammatt Hafizan v. Musammatt Mendhoo*. P. R. 1869, No. 7; See *Krishnardo Ramchand v. Benabai*, I. L. R. 20 Bom. 571.

Chose in action.—"This phrase had originally a clear and definite meaning, viz. a right to take proceeding in a Court of law to recover debt or damages. In this sense it was applied to chattles or choses in possession which were tangible personal property"—*E. L. E.*; it now practically includes "all personal chattles which are not in possession"—per Lord Blackburn in *Colonial Bank v. Whinney*, (1886), 11 app. Cas. 440; it is not co-extensive with 'actionable claim'—per Sir John Edge. C. J. in *Shib Lal v. Azmatullah*, I. L. R. 18 All. at p. 267.

Blackstone in his *Commentary on the common Law of England* (Vol. II. p. 396) says: Having thus considered the several divisions of property in possession, which subsists there only where a man hath both the right and also the occupation of the thing, we will proceed next to take a short view of the nature of property in action, or such where a man hath not the occupation but merely a bare right to occupy the thing in question

the possession whereof may, however, be recovered by a suit or action at law, from whence the thing so recoverable is called a thing or *chose in action*".

Chowdhary.—"Under the old Hindoo system of the land revenue the fiscal head of the pergunnah or *bisi* (a division consisting of a number of villages) was called a *Chowdhary*, *Bissoi*, *Khandadipati* or *Desmukh*. It was his duty to preserve the peace (with the assistance of a military force of *Khandaits* under a military commander) and collect the revenue of the pergunnah and transmit it to the treasury"—see *Phillip's Land Tenures of Lower Bengal*, I. L. L. 1874-75, p. 37. In the Muhammadan times he came to be called the "*crory*"—*Ibi*.

Christians.—Defined, *Act 15*, 1872, *S. 3*.

Chukdari tenure.—See *Mackdoom Shah Ali Mohammad*. v. *Coomar Ali*, *P. R.* 1870, *No. 44*.

Chupperbund ryots.—See '*Khoodkash*' *ryots*.

Church.—Defined, 37-8 *V. C.* 77, *S. 14*; *Act 15*, 1872, *S. 3*.

Church of England.—Defined, *Act 15*, 1872, *S. 3*.

Church of Rome.—Defined, *Act 15*, 1872, *S. 3*; *Act 6*, 1886, *S. 24*.

Church of Scotland.—Defined, *Act 15*, 1872 *S. 3*; *Act 6*, 1886, *S. 24*.

Circar.—For fiscal purposes Akbar had divided the country into several *Subahs*, subahs into several *Circars*, and the pergunahs into turfs,, *Kismuts*, and villages or *Mouzahs*. In later times *subah* was divided into several *chuklahs* each containing more than one *circar*—See *Phillip's Land Tenures of Lower Bengal*, *T. L. L.* 1874-75, p. 83. For the constitution in Manu's time see *Manu Chap VII* *sl.* 115, 118, 119.

Circle.—Defined, *Act 2*, 1886, *S. 3*, (4); *Beng. Act 5*, 1887, *S. 2*; *Mad. Act 4*, 1889, *S. 3* (J); *N. & O. Act 3*, 1892 *S. 2* (5)

Circle Tahsildar.—Defined, *Beng. Act 5, 1887, S. 2*.

Citation.—"It is now in use in the practice of the Probate and Divorce Division. In Probate practice it is a summons issuing from the principal registry, chiefly used when persons having the primary right to a grant of probate or letters of administration neglect to apply for the same, and some person having an inferior interest desires to obtain a grant; the citation, therefore, cites the various persons with the superior interest to appear and calls upon them either to renounce their right or to show cause why the applicant should not obtain a grant. In divorce practice, a citation is served on the respondents, requiring them to appear and answer the allegation in the petition filed against them."—*E. L. E.*

City.—Defined, *Bom. Act 3, 1888 S. 3, (a)*; *Mad. Act 1, 1884 S. 3 (9)*.

City Court.—Defined, *Act 7, 1892, S. 2 (1)*.

City of Bombay.—Defined, *Beng. Act 3, 1886, S. 3 (7)*

City of Madras.—Defined, *Act 7, 1892, S. 2 (2)*; *Mad. Act 1, 1884 S. 3 (5)*; *Mad. Act 3, 1888, S. 3*; *Mad. Act 1, 1891, S. 3 (5)*.

Civil Court.—Defined, 44-5 *V. C.* 58. *S. 190 (31)*; *Act 35, 1858. S. 23 Act 20, 1863, S. 2*; *Act 17, 1897, S. 47 Explanation (ad Act 23, 1881, S. 9)*; *Beng. Act 7, 1876, S. 3 (1)*; *Bom. Act 6, 1862, S. 21 (1)*,

A forest-officer is a "Civil court" for the purposes of the *Pension's Act* (53 of 1871)—See *Secretary of State for India in council v. Vidya Pillai*; *I. L. R. 17 Mad. 193*; See also the observations of Stewart C. J. in *Madho Buksh Singh v. Murli Manohar*, *I. L. R. 5 All. at p. 414*.

Civil death.—"Used in contrast with natural death to describe loss of all civil rights and status"—*E. L. E.*

Civil District—Defined, *Act 20, 1869, S. 4 (3)*.

Civil Jail—Defined, *Act 10, 1859, S. 168; Act 12, 1881, S. 3 (8); Beng. Act 1, 1879, S. 2*.

Civil Officer—Defined, *Act 5, 1869, Pt I. Ci (e) (21)*.

Civil Prisoner—Defined, *Act 9, 1894, S. 3 (4)*.

Civil Proceedings—"To the purely civil matters or proceeding might be referred the entire theory of and practice connected with private rights, wrongs and remedies; the pleadings in actions; the practice to be observed therein; anything in short, connected with, or auxilliary or incidental to the conduct of an action"—*Broom's Common Law, ninth edition, (1896) p. 45*.

Claim—Field J. in *Kalidhun Chuttapadhyaya v. Shiba Nath Chuttapadhyaya (I. L. R. 8 Cal. at p. 495 S. C. 11 C. L. R. pp. 70, 71)* observes: "A 'claim' is a demand of right, a challenge of interest of something which is not in the possession of the claimant. A remedy is the legal means to recover a right"—Further on he remarks: "It is not easy to define what constitutes a 'claim' as distinguished from a 'remedy', for the former appears to include the latter to some extent". As used in *S. 463 of the Indian Penal Code* is not limited in its application to "a claim to property—per Edge C. J. and Aikman J. in *Q. E. v. Shoshi Bhushan, I. L. R. 15 All. 210*; as used in *S. 331 Civil Procedure Code*—See *Mahabir Pershad v. Parma, I. L. R. 14 All. at p. 419*.

Claiming—As used in *S. 73, of the Registration Act (8 of 1871)* See *In the matter of the petition of Bishnath, I. L. R. 1 All. 318*.

Clan—Defined, *Regn. 1, 1895, S. 2 (3); Regn. 2, 1896, S. 2 (1) Regn. 5, 1896, S. 2 (4)*.

Class—Defined, *Regn. 4, 1887, S. 1 (6); as used in Sub-section (o)*

of S. 158 of the *Bengal Tenancy Act* (8 of 1835) See *Digendra Nath Chowdhary v. Soyendra Nath Roy Chowdhari*, I. L. R. 24 Cal. at p. 199.

"A number of persons are popularly said to from a class when they can be designated by some general name, as 'children' 'grand children' 'nephews'; but in legal language the question whether the gift is one to a class depends not upon these considerations, but upon the mode of gift itself, namely, that it is a gift of an aggregate sum to a body of persons uncertain in number at the time of the gift to be ascertained at a future time, and who are all to take in equal or in some other definite proportions, the share of each being dependent for its amount upon the ultimate number of persons"—*Jarman on Wills* pp. 268, 269 quoted with approval in *Krishna Nath Narayan v. Atmaram Narayan*, I. L. R. 15 Bombay 548. See also the observations of their Lordships of the Privy Council in *Rai Bishun Chund v. Musammat Asmaida Koer*, I. L. R. 6 All. at p. 574.

Clear and positive proof—Sir Joseph Napier while delivering the judgment of their Lordships of the Privy Council in *Gopee Kishen Goshamee v. Brindabun Chunder Sircar Chowdhary* (13 M. J. A. at p. 54) observes:—Clear and positive proof "is such as, upon the case made, leaves no reasonable doubt as to the matter required to be proved, the truth of which it establishes to a moral certainty, and it is by the combined effect of the whole evidence that we have to Judge whether the proof is 'clear' and 'positive'".—

Clerk—Defined, *Act* 45, 1860, S. 27, *Explanation*.

Clerk of the crown—Defined, *Act* 10, 1882, S. 4 (6).

Clubbed packet—Defined, *Act* 14, 1866, S. 2.

Coast—Defined, *Act* 5, 1883, S. 6 (5) (*ad. Act* 6, 1891, S. 9).

Coasting ship—Defined, *Act* 10, 1889, sch. 1, Pt. II, *Explanation* I.

Coasting steamer.—Defined, *Act 10, 1889, Sch 1, Pt. 11, Explanation 1.*

Coasting vessel.—Defined, *Act 7, 1878, S. 3 (g).*

Code.—As used in *Sch. 11, Art 171 B of Act 15 of 1877*—See *In the matter of the Petition of Soshi Bhushan Chund, I. L. R. 11 Cal. 694.*

Codicil.—"In the early English writers the term 'codicil' was used in a sense resembling that which it had in Roman Law, as meaning an informal testamentary instrument not necessarily dependent on a will. It now means in ordinary parlance a testamentary instrument altering or modifying a will"—*E.L.E.*

Defined, *Act 10, 1865, S. 3; Act 1, 1869, S. 2; Act 5 1881 S. 3.*

Codification.—"Bentham is responsible for the invention of the word 'codification' or at all events for its introduction into the English language. According to him the object of a code is that every one may consult the law of which he stands in need in the least possible time. The code was to be complete and self sufficient and was not to be developed, supplemented, or modified except by legislative enactment. He underrated the difficulties of carrying them into execution and overrated the powers of Government. He broke violently with the past. He aimed at finality, and made insufficient allowance for the operation of the natural growth and changes. In British India administrative exigencies led to the enactment of codes suitable to and sufficient for the requirements of the situation"—*E. L. E.*

Coffee.—Defined, *Mad. Act 8, 1878, S. 3.*

Coffee estate.—Defined, *Mad. Act 8, 1878, S. 3.*

Cognizable case.—Defined, *Act 10, 1882, S. 4 (9).*

Cognizable offence.—*Act 10, 1882, S. 4 (9); Bom. Act 3, 1883, S. 440 (3).*

Cohabitation.—"Cohabitation' does not necessarily imply the daily and nightly residence together of a husband and wife under the same roof. Circumstances of life, such as business duties, domestic service, and other things may separate husband and wife, and yet notwithstanding there may be an existing state of cohabitation"—See *Huntale v. Huntale*, 68 L. J. P., 83.

Coin.—Defined, *Act* 45, 1860, S. 230.

Collateral.—"The word 'collateral' is of frequent use in law where it bears its ordinary signification of 'parallel' or 'additional'. It is used in a variety of connections, e. g. we speak of a collateral agreement, collateral security, collateral relations and collateral facts"—*E. L. E.*

Collateral consanguinity.—Defined, *Act* 10 1865, S. 22.

Collection agent.—Defined, *Regn.* 1894, S. 10 (i).

Collection of assets.—The expression as used in SS. 26 and 29 of the Administrator General's Act (8 of 1855), does not necessarily mean realization by sale or by actual receipt or possession, yet on the other hand they imply doing of some act in connection with the assets whereby the Administrator General incurs trouble, expense or responsibility—*per* Scotland C. J. in *In the goods of Simpson* 1 *Mad. H. C. R.* 171 (1863); *per* Sale J. in *In the goods of Curzon*, 1. L. R. 25 *Cal. at p.* 78.

Collector.—The first step taken by the East India Company towards bringing the collections under their own control was the appointment in 1769 of certain officers called "supervisors" to superintend the native officers in collecting the revenue and administering justice. These "supervisors" were afterwards called "collectors" by the Regulations passed in 1772—See *Phillip's Land Tenures of Lower Bengal*, T. L. L. 1874-75 pp. 236 and 245. Defined, *Act* 20, 18 S. 6; *Act* 23, 1850, S. 14; *Act*

12, 1851, S. 18; *Act* 32, 1855, S. 21; *Act* 11, 1859, S. 61; *Act* 22, 1872, S. 4; *Act* 8, 1873, S. 3 (6); *Act* 19, 1873, S. 3. (2); *Act* 3, 1878, S. 3, *Act* 6, 1878, S. 3; *Act* 1, 1879, S. 3 (8); *Act* 12, 1881 S. 3; *Act* 14, 1882, S. 2; *Act* 19, 1883, S. 3, *Act* 8, 1885, S. 3 (16); *Act* 2, 1886, S. 3 (*J*); *Act* 5, 1886, S. 3 (2); *Act* 11, 1886, S. 3 (14); *Act* 16, 1887, S. 78 (2); *Act* 1, 1890, S. 2 (2); *Act* 8, 1890, S. 4. (6); *Act* 9, 1890, S. 3 (18); *Act* 1, 1894, S. 3, (*c*); *Act* 2, 1896, S. 3 (3); *Act* 12, 1896, S. 3, (*b*); *Act* 10, 1897, S. 3 (10); *Beng. Act* 1865, S. 1; *Beng. Act* 7, 1866, S. 10; *Beng. Act* 7, 1868, S. 1; *Beng. Act* 4, 1870, S. 1; *Beng. Act* 6, 1873; S. 3; *Beng. Act* 5, 1875, S. 2; *Beng. Act* 3, 1876, S. 3 (5); *Beng. Act* 7, 1876, S. 3. (13); *Beng. Act* 8, 1876, S. 4 (xvii); *Beng. Act* 7, 1878, S. 4; *Beng. Act* 9, 1879, S. 3; *Beng. Act* 6, 1880, S. 13; *Beng. Act* 9, 1880, S. 4; *Beng. Act* 2 1882, S. 3; *Beng. Act* 8, 1895 S. 2 (*f*); *Bom. Act* 3, 1899, S. 12; *Bom. Act* 5, 1878, S. 3 (4) (*am. Bom. Act* 3, 1886); *Bom. Act* 7, 1879, S. 3 (*S.*) (*am. Bom. Act* 3, 1886); *Bom. Act* 5, 1879, S. 3, (3); *Bom. Act* 3, 1886, S. 3 (12); *Bom. Act* 2, 1890; S. (*b*); *Mad. Act* 8, 1865, S. 1; *Mad. Act* 5, 1882, S. 2; *Mad. Act* 1, 1816, S. 3 (12); *Mad. Act* 1, 1891, S. (6); *N. & O. Act* 1, 1887, S. 2, (12); *N. & O. Act* 2, 1892, S. 2 (14); *N. & O. Act* 2, 1892, S. 2 (3); *Regn.* 2, 1877, S. 2 (*b*).

Collectorate.—Defined, *Act* 6, 1853, SS. 3, 4.

Colonial court of admiralty.—Defined, 57-8 V. C. 60, S. 742.

Colonial law.—Defined, 54-4 V. C. 27, S. 15.

Colonial legislature.—Defined, 52-3 V. C. 63, S. 18 (7).

Colony.—Defined, 13-14 V. C. 96, S. 5; 23-4 V. C. 88, S. 1; 37-8 V. C. 27, S. 2; 44-5 V. C. 58: S. 190 (23); 46-7 V. C. 30 S. 2; 52-3 V. C. 63, S. 18 (3); 53 V. C. 4, S. 9 (2); *Act* 10, 1897, S. 3 (11).

Collusion.—"Signifies agreement"—per Lord Bramwell in *Gill v. Continental Gas Co.*, *I. L. R.* 7 *Ex.* 337; per Sir Richard Couch in *Edison General Electric Co. v. West Minister and Vancouver Tramway Co.*, *L. R.* [1897] *H. L.* at p. 198.

Combination.—The term 'combination' is most commonly used in law with reference to questions of the legality of the association or union of two or more persons for some common purpose, such as protecting or furthering their own actual or supposed professional or commercial or industrial interests. In this sense it is generally employed as a term of approval for that which when against law or public opinion is styled 'conspiracy'. When a combination is to do something forbidden by the criminal law it is punishable as conspiracy and the word 'combination' is occasionally coupled with 'conspiracy' in criminal enactments"—*E. L. E.*

Command.—Defined, *Act* 5, 1869, *Pt. 1. Cl. (e)* (16) [*ins. Act* 12, 1894, *S.* 4).

Commandant.—Defined, *Act* 15, 1887, *S.* (4); *Act* 5, 1892, *S.* 2 (4); *Regn.* 2, 1888, *S.* 2 (2); *Regn.* 4, 1890, *S.* 3 (4).

Commander-in-chief—Defined, 44-5 *V. C.* 58, 190 (3)

Commanding officer.—Defined, *Act* 5, 1869, *Pt. I. Cl. (e)* 177 (*am. Act* 12, 1894, *S.* 4); *Act* 14, 1882, *S.* 465, *Explanation*; *Act* 14, 1887, *S.* 2 (1) (*f*).

Commenced.—As used in *S.* 22 of *Act* 9 of 1871, See *Dayal Jairaj v. Khalav Ladha*, 12 *B. H. C. R.*: 97.

Commencement.—Defined, 52-3 *V. C.* 63, *S.* 36 (1); *Act* 10, 1897, *S.* 3 (12); *Mad Act* 1, 1891, *S.* 3 (7); *N. & O. Act* 1, 1887, *S.* 2 (7).

Commissioner.—Defined, *Act* 23, 1850, *S.* 14; *Act* 8 1873, *S.* (5); *Act* 3, 1878, *S.* 3; *Act* 15 1879, *S.* 2; *Act* 20, 1881, *S.* 3

Act 21 1881, S. 3; Act 5, 1896, S. 2 (4); Act 10, 1897, S. 3 (13); Beng. Act 9, 1871, S. 1. Beng. Act 7, 1878, S. 4; Beng. Act 9, 1880, S. 4; Beng. Act 5, 1883, S. 1; Beng. Act 1, 1885, S. 5; Beng. Act 3, 1885, S. 5; Beng. Act 8, 1852, S. 2, (g); Bom. Act 6, 1873, S. 3; Bom. Act 5, 1878, S. 3 (2); (am. Bom. Act 3, 1886); Bom. Act 7, 1882, S. 4 (am. Act 16, 1895); Bom. Act 3, 1886, S. 3 (11); Bom. Act 3, 1888, S. 68; Bom. Act 2, 1890, S. 3 (a); Mad. Act 1, 1886, S. 3 (3); Mad. Act 3, 1888, S. 3; Mad. Act 4, 1889, S. 3 (l); N & O. Act 1, 1887, S. 2 (11); Regn. 4, 1872, S. 1. Regn. 2, 1886, S. 2 (1); Regn. 4, 1887, S. 3 (2); Regn. 1, 1889, S. 3 (5); Regn. 5, 1893, S. 3, (1); Beng. Act 8, 1876, S. 4 (xvii); Beng. Act 5, 1876, S. 6 (19); Beng. Act 1, 1879, S. 2; Beng. Act 6, 1880, S. 3; Beng. Act 3, 1884, S. (18); Beng. Act 2, 1888, S. 3; Beng. Act 2, 1891, S. 3 (5); Beng. Act 1, 1893, (7); Bom. Act 2, 1887, S. 2 (4); Bom. Act 3, 1888 S. 3, (d).

Commissioner for oaths.—Defined, 57-8 *V. C.* 90, S. 742.

Commissioner of a Division.—Defined, *Act 19, 1873, S. 3 (3); Act 12, 1881, S. 3; Bom. Act 2, 1884, S. 4 (5).*

Commissioner of Police.—Defined, *Beng. Act 1, 1893, S. 3 (b); Beng. Act 1, 1896, S. 2 (c).*

Commissioner of Revenue.—Defined, *Act 12, 1896, S. 3 (e).*

Commit the case itself.—See *Empress v. Fattehyab Khan, I. L. R. 4 Cal. 570.*

Commitment.—"Is a warrant of order of a court or a justice of peace, directing a ministerial officer such as sheriff, bailiff or constable, to take a named person, whether on remand or to wait trial, or during trial, or in execution of judgment or sentence, and directing the governor or gaoler of the prison to detain him for

the period and purpose specified, and to produce or discharge him at its termination"—*E. L. E.*

Committee.—Defined, *Act 15, 1873, S. 3*; *Act 14, 1879, S. 2, Act 22, 1883, S. 2*; *Act 19, 1884, S. 2 (6)*; *Act 1, 1886, S. 2*; *Act 18 1889, S. 3, (2)*; *Act 20, 1891, S. 3 (2)*; *Beng. Act 9, 1880, S. 4 Regn. 5, 1886, S. 2 (1)*.

Common carrier.—"A person who holds himself out as a carrier of the goods of all persons who think fit to employ him for hire, is a common carrier of such goods as he publicly professes to carry"—*E. L. E.* "At common law no person is bound as a common carrier to carry any goods of a kind which he does not profess to carry"—*per Lindley L. J. in Dickson v. Great Northern Railway Co. 18 Q. B. D. at p. 183*; Defined, *Act 3, 1865, S. 2*.

Common gaming-house.—"Is a house in which a large number of persons are invited habitually to congregate for the purpose of gaming"—*Hawkins J. in Jenks v. Turpin, 13 Q. B. D. 505*; Defined, *Act 21, 1857, S. 59, (am. Beng. Act 3, 1197, S. 3)*; *Beng. Act 3, 1867, S. 1*; *Act 16, 1884, S. 2 (2)*; *Beng. Act 2, 1866, S. 51*; *Beng. Act 4, 1866, S. 3 (am. Beng. Act 3, 1897, S. 2)*; *Beng. Act 2, 1867, S. 1 (am. Beng. Act 3, 1897, S. 4)*; *Bom. Act 3, 1866, S. 14*; *Bom. Act 4, 1887, S. 3*; *Mad. Act 3, 1888, S. 3*.

Common sense.—" 'Legal reason' and 'common sense' are often invoked by the administrators of law as guides whom they may safely follow. By legal 'reason' is to be understood that schooled and tutored reason which the well-trained legal intellect brings to bear upon the question submitted to it"—*Brooms Common Law (ninth edition, 1896)*. 'However technical, rules are to be attended to, and in some cases cannot be dispensed with; yet in administering justice we must not lose sight of 'common sense'—*per Lord Kenyon C. J. (in Rousson v. Johnson, 1 East*

208) quoted *ibi*. "Principles of private Justice, moral fineness, and public convenience, when applied to a new subject, make common law without a precedent much more, when received and approved by usage"—*per* Willes J. (in *Millar v. Taylor*, 4 Burr. 2312), quoted *ibi*.

Communications.—Defined, Act 15, 1889, S. 2 (2).

Community.—See "*Village community*",

Company.—Lord Justice James in *Smith v. Anderson* (15 Ch. D. at p. 273) observes:—"I cannot understand what, the difference is between a 'company' and an 'association'. The word 'association' in the sense in which it is now commonly used, is etymologically inaccurate; for 'association' does not properly describe the thing formed, but properly and etymologically describes the act of associating together from which act of associating there is formed a company or partnership". An ordinary partnership is a partnership composed of definite individuals bound together by contract between themselves to continue combined for some joint object, either during pleasure or during a limited time, and is essentially composed of the persons originally entering into the contract with one another. A company or association (which I take to be synonymous terms) is the result of an arrangement by which parties intend to form a partnership which is constantly changing, a partnership to-day consisting of certain members and tomorrow consisting of some only of those members along with others who have come in, so that there will be a constant shifting of the partnership, a determination of the old and a creation of a new partnership, and with the intention that so far as the partners can by agreement between themselves bring about such a result, the new partnership shall succeed to the assets and liabilities of the old partnership"—Defined, 46-7 V. C. 30, S. 2: Act 18, 1885, S. 16 (6); Act 2, 1886, S. 3 (2); Act 18, 1891, S. 2, (1); Act 1, 1894, S. 3 (e); Beng. Act 9, 1895, S. 2 (b).

Compartment.—For the meaning of the word 'compartment' as used in S. 110 of the Indian Railway Act (9 of 1890) See *In re Dadabhai Jamsedji*, I. L. R. 24 Bom. 293.

Compassing.—The word 'compassing' or 'imagining' signifies the "purpose or design of the mind or will and not, as in common speech, the carrying such design to effect"—4 *Bla. Com.* p 78.

Compelled.—As used in the proviso to S. 132 of the Evidence Act (1 of 1872) applies only when the court has compelled a witness to answer a question and not to a case where the witness has not asked to be excused from answering a question but gives his answer without any claim to have himself excused—*per* Edge. C. J. in *Q. E. v. Moss*, I. L. R. 16 All. 89.

Compensation.—"Is the word usually applied by lawyers to the satisfaction to be made to persons whose rights are interfered with or whose property is taken away in the exercise of stationary powers"—*E. L. E.*

Competent.—As used in S. 25 *Civil Procedure Code* (Act 10 of 1877) means "having jurisdiction"—*per* Mahmood J. in *Nidhi Lal v. Mazhar Hussain* I. L. R. 7 All. at p. 239 ; .

Competent-jurisdiction.—The term as used in S. 13 of the *Civil Procedure Code* has regard to the pecuniary limit as well as to the subject matter—*per* Collins C. J. *Shephard J. in Subbammal v. Huddleston* I. L. R. 17 Mad. 273 ; *per* Edge. C. J. and Banerji J. in *Shekh Hussain v. Ram Kunwar Singh* I. L. R. 16 All. 183 ; See also *Misir Raghubser Dayal v. Sheo Balsh Singh* I. L. R. 9 Cal. 439.

In S. 537 of the *Indian Penal Code* means "a court of competent jurisdiction in respect of the particular offence charged"—See *Q. E. V. Krishna Bhat*, I. L. R. 10 Bom. at p 825.

Competent officer.—The term as used in the proviso (k) to S. 4 of Act 10 of 1876 includes the Governor in Council—See *Janardan*

Rao v. The Secretary of State for India. I. L. R. 13 Bom. 442.

Competent witness.—Defined, *Act 4, 1872, S. 120.*

Complaint.—Defined, *Act 10, 1872, S. 4 (a).*

Completion.—In *S. 353 of Bombay Act 3, of 1888*, is used in its ordinary sense—See *In re Raghunath Makund. I. L. R. 19 Bom. 372.*

Compound.—Corruption from *campagna*, the Portuguese for country house, but used in India to denote the enclosed land or garden in which a house stands—See *Doe d. Howard v. Pestonji Perry's Oriental Cases*, at p. 537 (note).

Compromise.—"Now what constitutes a compromise? A compromise takes place when there is a question of doubt and the parties agree not to try it out, but to settle it between themselves by a give-and-take arrangement"—*per Kay L. J. in Huddersfield Banking Co. Ltd. v. Henry Lister and Son Ltd. [1895] 2 Ch. D. 273.*

Compulsory deposit.—Defined, *Act 9, 1897, S. 2 (4).*

Conclusive evidence of fact.—Defined, *Act 6, 1882, S. 77.*

Conclusive proof.—Defined, *Act 1, 1872, S. 4.*

Condition.—"The term 'condition' is used indifferently to mean either the event upon the happening of which an estate or an obligation is to commence or cease, or the provision or stipulation in the grant or will or contract that the estate or obligation shall depend upon the happening of the event. Conditions are generally classified as *conditions precedent*, which must be performed or satisfied before the estate or obligation can arise, and *conditions subsequent*, upon the performance or occurrence of which its continuance depends"—*E. L. E.*—In *Ex parte Collins*

(L. R. 10 *Ch. at p.* 372) James L. J. enumerates also a class : "*conditions inherent*"—"when the estate is qualified, restrained or charged" by them—quoted *ibi*.

The terms *proviso* and *condition* are said to be synonymous and signify some quality annexed to a real estate, by virtue of which it may be defeated, enlarged or created upon an uncertain event—See "*The Law relating to the Transfer of Immoveable Property*".—*T. L. L.* 1886 p. 228 (*edition* 1890).

The courts in England have sometimes endeavoured to draw a distinction between a *condition subsequent* and a *limitation*. Lord Eldon remarks:—"there is no doubt that property may be given to a man until he shall become bankrupt, but a disposition to a man until he shall become bankrupt and after his bankruptcy is over is quite different from an attempt to give to him for his life with a *proviso* that he shall not sell or alien it. If that condition is so expressed as to amount to a limitation reducing the interest short of a life-estate, neither the man nor the assignee can have it beyond the period limited"—See *Brandson v. Robinson*, 18 *Ves*, 435.

Conditional.—Defined, *Act* 16, 1881, S. 5.

Conditional sale.—See "*Mortgage by conditional Sale*"

Conduct.—Defined, *Act* 1. 1872, S. 8 *Explanation* 1. "Signs made by a person before his death are the *conduct* of a person an offence against whom is the subject of any proceedings within the meaning of S. 8 of the Evidence Act (1 of 1872)"—per Mahmood J. in *Q. E. v. Abdullah, I*, L. R. 7 *All.* 386.

Conducting the sale.—The expression "conducting the sale" as used in S. 311 of the *Code of Civil Procedure* "does not include any proceedings unconnected with the actual carrying out of the sale, but refers to the action of the officer who makes the sale,

and not as any thing done antecedent to the order of sale"—per Mahmood J. in *Ramchaibar Misir v. Bachu Bhagat* I. L. R. 7. All. 641 at p. 645.

Confession.—"The word 'confession' as used in the sections of the Evidence Act relating to confession must not be construed as including a mere inculpatory admission which falls short of being an admission of guilt"—per Straight J. in *Q. E. v. Jagrup*, I. L. R. 7 All. at p. 648.

A direct admission or acknowledgment of his guilt by a person who has committed a crime. It may be judicial or extra-judicial"—*E. L. E.*

It is an "admission made at any time by a person charged with an offence, stating or suggesting the inference that he committed that offence"—per Plowden J. in *Ilahi Baksh v. the Empress*, P. R. No. 16 (cr) at p. 32.

Confinement.—Is synonymous with imprisonment—Lord Esher M. R. remarks: "The counsel for the husband was obliged to admit that, if she was kept to one room, that would be imprisonment; but he argued that, if she was only kept in the house, that was confinement only. That is a refinement too great for my intellect. I should say that confining a person to one house was imprisonment, just as much as confining such person to one room"—See *Q. v. Jackson*, 1891. 1. Q. B. at p. 682.

As used in S. 223 of the Indian Penal Code must not be regarded as restricted to confinement within circumscribing limits. In SS. 220-225, the Legislature appears to have used the words 'custody' and 'confinement co-extensive'—*Q. E. v. Innam Din and Hari Singh*, P. R. 1891, No. 2 (cr.)

Confiscation.—"The word 'confiscation' does not necessarily import that the appropriation is to be made as a penalty for a crime nor when used in that sense does it necessarily imply that the

forfeiture has accrued upon conviction, but it may also be properly used as applicable to appropriations of property by Government as an act of State"—See *Raja Salig Ram v. the Secretary of State for India*, 12 B. L. R. 168.

The term ["confiscation"] in the Roman Law meant seizing or taking into the hands of the Emperor and transfer to the Imperial fiscus or treasury. In English law 'forfeiture' is the term ordinarily applied to the exercise of this right"—*E. L. E.*

Consanguinity.—Defined, Act 10, 1865 S. 20 ; "it may be either *lineal* as between ancestors and descendants in a direct line, or *collateral* as between the stocks descended from a common ancestor".—*E. L. E.*

Consent.—Defined, 33-8 V. C. 77, S. 14 ; Act 45, 1860, S. 90 ; Act 9, 1872, S. 13.

Consideration.—Defined, Act 9, 1872, S. 2 (d).

"A valuable consideration in the sense of the law may consist either in some right interest, profit, or benefit accruing to one party, or some forbearance, detriment, loss, or responsibility given, suffered, or undertaken by the other"—See *Currie v. Misa*, L. R. 11 Exch. 162.

"The consideration for a promise may be *executory*, and then it is a promise given for a promise : or it may be *executed*, and then it is an act or forbearance constituting at once the proposal or acceptance and the consideration for the promise given in respect of it ; or it may be *past*, and then it is a mere sentiment of gratitude or honour prompting a return for benefits received ; in other words it is no consideration at all"—See *Anson's Law of Contract* p. 93 [eighth edition 1895].

Patteson J. remarks: "*Motive* is not the same thing with *consideration*. *Consideration* means something, which is of some

value in the eye of the law moving from the plaintiff; it may be some benefit to the plaintiff, or some detriment to the defendant but at all events it must be moving from the plaintiff"—*Thomas v. Thomas*, 2, Q. B. 851.

Plowden J. thus observes: "We are of opinion that the expression '*consideration*' being a technical legal term, must be taken to be used in its technical sense, whatever that may be. But we may note that the definition of '*consideration*' in the Contract Act is not necessarily a definition for all purposes including that of the Stamp Act though it may be a useful guide to ascertain its meaning for the purpose last mentioned"—*P. R.* 1885 No. 85.

Conspiracy.—"It has always been held to be the law that the gist of the offence of conspiracy is the bare engagement and association to break the law, whether any act be done in pursuance thereof by the conspirators or not"—*per* Lord Chief-Justice Tindal in *O'Connell and others v. The Queen*, 11 Cl. and F. at p. 233.

A conspiracy "cannot exist without the consent of two or more persons, and their agreement in an act in advancement of the intention which each of them has conceived in his mind"—*per* Lord Chelmsford in *Mulcahy v. The Queen*, L. R. 3 H. L. at p. 328, [1868].

"The offence has been held to consist in the conspiracy and not in the facts committed for carrying it into effect"—*per* Lord Denman C. J. in *The Q. v. Kenrick*, 5 Q. B. at p. 61.

Constable.—Defined. 44-5 V. C. 58. S. 190 (38); 445 V. C. 69, 39; Bom. Act 7, 1867, S. 1; Bom. Act 4, 1890, S. 3 (c).

Construction.—"I do not think that '*construction*' can be limited to the original construction. That would be in effect substi-

tuting 'erection' for 'construction'—Nor do I think that 'construction' and 'repair' can be limited to the construction and repair of a building 'as a whole'.....Construction, repair, demolition, these three operations cover, I think, every varying phase in the life of a building from its beginning to end"—per Lord Macnaghton in *Hoddinott v. Newton Chambers and Co. Ltd.* [1901] *A. C.* at pp. 54, 55.

"The expression 'construction' as applied to a document, at all events as used by English lawyers, includes two things: (1) the meaning of the words; and (2) their legal effect or the effect which is to be given to them. The meaning of the words I take to be a question of fact in all cases, whether we are dealing with a poem or a legal document. The effect of the words is a question of law"—per Lindlay L. J. in *Chatenay v. Brizihan Submarine Telegraph Co.* 1891, 1 *Q. B.* at p. 85.

Constructive fraud.—See "*Fraud*".

Constructive notice.—See "*Notice*".

Consul.—See "*Ambassador*".

Consular officer.—Defined, 52-3 *V. C.* 63, S. 12, (20) 57-8 *V. C.* 60, S. 742; *Act* 10, 1897, S. 3, (14).

Contempt.—Defined, *Act* 1, 1845, S. 32; *Act* 11, 1859 S. 57.

Contention.—Defined, *Act* 10, 1865, S. 253 *A. Explanation.* (*am. Act* 6, 1881, S. 71); *Act* 5, 1881, S. 73 *Explanation.*

Contentious suit.—A suit becomes 'contentious' within the meaning of S. 52 of the transfer of Property Act when the summons is served upon the defendant—per Norris and Beverley JJ. in *Radha Syam Mahapatra v. Sihu Pande*, 1. L. R. 15 Cal. 647 at p. 651, per Strachey C. J. and Banerji J. in *Pursotam Saran v. Sanchi Lal*, All. W. N. 1899 p. 149; per Collins C. J. and Wilkinson J.

and in *Abhoy v. Annamalai*, *I.L.R.* 12 *Mad.* 180. *Maclean C. J.* in *Jogendra Chundra Ghose v. Fulkumari Dass* (*I. L. R.* 27 *Cal.* at pp. 83, 84) observes:—"I am inclined to think this view (namely the view taken in *Radha Syam Mahapatra v. Sihu Pande*, *Sup.*) proceeds upon some confusion between what is contentious and the exact point of time when a *lis pendens* is constituted. I should infer that the conclusion was arrived at by analogy to the English cases which decide that, as between plaintiff and defendant, the service of the subpoena constitutes the *lis pendens* between them". "The expression 'contentious suit' is, I think used in contradistinction to a friendly suit in which there is no contest and the parties bring their suit only to obtain the decree of a court of justice declaring their rights as to which they are themselves in perfect agreement".—per Bonnerjee *J. ibi.*, at p. 92.

Contested election.—Defined, *Bom. Act* 3, 1888, *S.* 26 (2) (8).

Contingent contract.—Defined, *Act* 9, 1872, *S.* 31.

Contingent interest.—Defined, *Act* 4, 1882, *S.* 21.

Contingent judgment.—As used in *S.* 69 of *Act* 15 of 1882.

See *Nusserwanjee v. Pursotam Dass*, *I. L. R.* 11 *Cal.* 298.

Contingent right.—Defined, *Act* 27, 1866, *S.* 3.

Continuing breach.—See *Balgobind Das v. Barkat Ali*, *All.*

W. N. 1888 p. 15 ; *Parshadi Lal v. Gulshan Ali* ; *All. W. N.* 1882 p. 125.

Continuing guarantee.—Defined, *Act* 9, 1872, *S.* 129.

Continuing offence.—Defined, *Bom. Act* 2, 1891, *S.* 56 (2).

Continuing trustee.—Defined, *Act* 28, 1866, *S.* 34.

Continuous easement.—Defined, *Act* 5, 1882, *S.* 5.

Continuous possession.—Defined, *Act* 2, 1876, *S.* 7 *Explanation.*

Contraband salt.—Defined, *Bom. Act 2, 1890, S. 3 (m)*; *Mad. Act 4, 1889, S. 3, (k)*.

Contract.—Defined, *Act 13, 1859, S. 4*; *Act 9, 1872, S. 2 (h) (am. Act 6 of 1899)*

A contract may be *executory* or *executed*, *express* or *implied*. An *executory* contract is one in which a party binds himself to do or not to do a particular thing. A contract *executed* is one in which the 'object of contract' is performed.

An *express* contract is one of which the terms are at the time of making it, defined in writing or openly uttered and avowed.

An *implied* contract, on the other hand, is one 'which reason and justice dictate and which the law, therefore, presume that every man undertakes to perform'—See *Broom's Common Law* at p. 246 (edition 1900) and the cases cited therein.

Contract of guarantee.—Defined, *Act 9, 1872, S. 126*.

Contract of indemnity.—Defined, *Act 9, 1872, S. 126*.

Contract for sale of immoveable property.—Defined, *Act 4, 1882, S. 54*.

Contractor.—Defined, *Act 1, 1882, S. 9*; *Mad. Act 5, 1866, S. 1*.

Contribution.—A person is not said to 'contribute' when he purchases something and pays for it. That is not a contribution but payment. *Contribution* means a payment no doubt but it is not a payment of the price of any particular thing sold to the person making it, but payment towards a general object—*per Lord Esher M. R. in Art Union of London v. Overseer of Savoy 1824, 2 Q. B. at p. 615 A. C.*

Contributory.—Defined, *Act 6, 1882, S. 124*.

Contributory negligence.—See "*Negligence*".

Conversion.—The rule is that whatever ought to have been done shall in equity be looked upon as done; thus money agreed to be

laid out in land shall be taken as land, *et e converso*—See *Lechmere v. Carlisle*, 3 P. W. 211.

Convey.—Defined, *Act 27, 1866, S. 2.*

Conveyance.—Defined, *Act 27, 1866, S. 2; Act 2, 1899, S. 2 (10);* “the definition in Act 1 of 1879 excludes all transfers or conveyances, *which are not made by way of sale*”—per Garth C. J. in *In the matter of the Maharajah of Durbhanga*, I.L.R. 7 Cal. at p. 23.

Conveyed in trust.—As used in Art. 134 Sch. ii of the Indian Limitation Act (9 of 1871) includes devises in trust, or perhaps as equivalent to the words ‘vested in trust, of S. 10, though it is not in accordance with ordinary language to call a disposition by will a conveyance’—per Green J. in *Maniklal Atmaram, v. Manchershie Dinsha Coachman*, I. L. R. 1 Bom. 279.

Convicted criminal prisoner.—Defined, *Act 9, 1894, S. 3 (3).*

Conviction.—Defined, 33-4 V. C. 52, S. 26; *Mad. Act 3, 1888, S. 3.*

The word ‘convicted’ or the ‘conviction’ of a person accused, is equivocal—“In common parlance, no doubt, it is taken to mean the verdict at the time of trial; but in strict legal sense it is used to denote the judgment of the court”—per Tindall C. J. in *Burgess v. Boetefeur*, 13 L. J. M. C. 126.

Coolie.—Defined, *Beng. Act, 5, 1888, S. 1.*

The word so much used in Anglo-Indian writings denotes the humblest exerciser of labour: it is usually derived from the Turkish word signifying ‘a porter’, but in Western India it is more probably derived from *koli*, or *colly*, the name of the aboriginal race who are found in the Concan, in Gujerat, and indeed under the name *holes* etc. over a much wider surface in India.—See *Doe d. E. I. Co. v. Hirabai, Perry's Oriental Cases at p. 483 (note).*

CO.

Co-parcener.—"An estate held in co-parcenary," says Blackstone, "is where lands of inheritance descend from the ancestor to two or more persons. It arises either by common law, or particular custom. ... And in either of these cases all the co-parceners put together make but one heir, and have but one estate among them". see *Blackstone's Commentaries of Common Law* vol. II p. 187.

Mr. Mayne in his book on Hindu Law and Usage says: "When we speak of a Hindu joint family as constituting a co-parcenary, we refer not to the entire number of persons who can trace from a common ancestor, and amongst whom no partition has taken place; we include only those persons who by virtue of relationship, have the right to enjoy and hold the joint property, to restrain, the acts of each other in respect of it, to burthen it with their debts, and at their pleasure to enforce its partition".

"The meaning of the term 'co-parcener' or 'hissadar' cannot be restricted so as to exclude the proprietor of a share by purchase"—per Plowden J in *Behari Lal v. Shibu and others*, P. R. 1880, No. 42.

Copyright.—Defined, 5-6 V. C. 45, S. 2; Act 5, 1888, S. 50(2);

Copyright may be defined as the sole and exclusive liberty of multiplying copies of an original work or composition—See *Copinger's Law of Copyright* p. 1.

"The term 'Copyright' may be understood in two different senses. The author of a literary composition, which he commits to paper belonging to himself, has an undoubted right at common law to the piece of paper on which his composition is written, and to the copies which he chooses to make of it for himself, or for others. If he lends a copy to another his right is not gone; if he sends it to another under an implied undertaking that he will not part with it or publish it he has a right to enforce that undertaking. The other sense of that word is, exclusive right of multiplying copies;

the right of preventing all others from copying, by printing or otherwise, a literary work which the author has published. This must be carefully distinguished from the other sense of the word". *per* Baron Parke, in *Jefferys v. Boosey* 4 H. L. C. 920.

Coronation oath.—"A solemn oath to govern rightly and religiously has for many centuries been taken by the sovereigns of England at their coronation"—*E. L. E.*

Corporation.—Defined, *Act* 6, 1890, *S.* 3 (2); *Beng. Act* 1, 1880, *S.* 28; *Bom. Act* 3, 1888, *S.* 3 (b).

"A corporation is an artificial or fictitious person. Its peculiarity is that it has legal existence distinct from that of the sum of its members. Obviously this is a refined conception not belonging to a rude age. Corporations are of two kinds—aggregate and sole. Examples of a corporation aggregate are the head and fellows of a college, the dean and chaplain of a cathedral and a trading company, a municipal corporation. Examples of a corporation sole which is a sort of corporation incarnate—are the sovereign, a bishop, a rector"—*E. L. E.*

Corporation of Calcutta.—Defined *Beng. Act* 2, 1888, *S.* 4.

Corps.—Defined, 44-5 *V. C.* 58, *S.* 190 (15); *Act* 5, 1869 *Pt.* 1, *Cl.* (e) (10) (*ms Act* 12, 1894, *S.* 4).

Co-sharer.—With reference to the interpretation of the term as used in a *wazib-ul-arz*, Sir John *Edge. C.J.* in *Dakhni Din v. Rahimun-nissa and others* [*I.L.R.* 16 *All.* 412] observes: "We regard the co-sharer in the clauses of the *wazib-ul-arz* as synonymous with 'proprietor' as used in *S.* 146 of *Act* 19 of 1873 before it was amended by *Act* 8 of 1879."

As used in *S.* 93 (g) of *Act* 18 of 1873 (*N. W. P. Rent Act*) see *Bhawanigir v. Dalmardangir*, *I. L. R.* 3 *All.* 144.

Cottage.—"A little house without land to it"—*Co. Litt.* 564 quoted in *E. L. E.*

Cotton.—Defined, *Beng. Act* 1, 1893, *S.* 3 (2);

Cotton goods—Defined, *Act* 2, 1896, *S.* 3 (5);

Cotton yarn.—Defined, *Act* 2, 1896, *S.* 3 (4).

Council.—Defined, *Beng. Act* 3, 1866, *S.* 6, *Beng. Act* 13, 1866, *S.* 6.

Council of Elders.—Defined, *Regn.* 4, 1887, *S.* 3 (1); *Regn.* 3, 1892, *S.* 4.

Councillor.—Defined, *Bom. Act* 3, 1888; *S.* 3 (c).

Counterfeit.—Defined, *Act* 45, 1860, *S.* 328.

Counterfeiting a Government Stamp.—Defined, *Act* 45, 1860, *S.* 255 *Explanation*.

Counterfeiting Coin.—Defined, *Act* 45, 1860, *S.* 231, *Explanation*.

Counterpart.—A counterpart of a deed is the duplicate or *fac simile* executed by a person other than the grantor".—*E. L. E.*

Countersignature.—"A signature placed alongside or in addition to another signature for the purpose of authentication or confirmation".—*E. L. E.*

Country liquor.—Defined, *Bom. Act* 5, 1878, *S.* 3 (8); *Mad. Act*, 1, 1886, *S.* 3 (ii).

Court.—Defined, 57-8 *V. C.* 60, *S.* 742, *Act* 20, 1863, *S.* 2; *Act* 15, 1865, *S.* 2; *Act* 4, 1869, *S.* 3 (4); *Act* 1, 1872, *S.* 3; *Act* 4 1882, *S.* 57 (e); *Act* 6, 1882, *SS.* 3, 130, 218; *Act* 14, 1882, *S.* 248, *Explanation*; *Act* 22, 1886, *S.* 3 (1); *Act* 8, 1890, *S.* 4 (5); *Act* 18, 1891, *S.* 2 (5); *Act* 1, 1894, *S.* 3 (d); *Beng. Act* 4, 1870, *S.* 1; *Beng. Act* 3, 1876, *S.* 3 (6).

Court.—"Literally the person and suite of the Sovereign; the place where the sovereign sojourns with his regal retinue, wherever that may be"—*W. L. L.*

"The definition of 'court' given in the Evidence Act (1 of 1872) is framed only for the purposes of the Act itself and should not be extended beyond its legitimate scope"—per West and Birdwood JJ. in *Q. E. v. Tulya*, *I. L. R. 12 Bom. 36*.

As used in S. 30 of the Evidence Act means not only the Judge, in a trial by a judge with a jury, but includes both judge and jury—See *Empress v. Ashutosh Chuckerbatti*, *I. L. R. 4 Cal. 483, F. B.*; *S. C. 3 C. L. R. 270*.

As used in S. 195 of the Criminal Procedure Code has a wider meaning than the words "Court of justice" as defined in S. 20 of the *I. P. C.*—See *Raghubans Sahay v. Kokil Singh*, *I. L. R. 17 Cal. 872*.

A registrar acting under S. 73 of the Indian Registration Act (2 of 1877) is not a *court* within the meaning of S. 195 of the Code of Criminal Procedure, nor is a sub-registrar acting under the same Act—per Knox J. in *Q. E. v. Ram Lal and others*; *I. L. R. 15 All. 141*; per Brandt and Parker JJ. in *In re Venkatachula Pillai*, *I. L. R. 10 Mad. 154*; per Turner C. J. and Hutchins J. in *Q. E. v. Subba*, *I. L. R. 11 Mad. 3*; per West and Birdwood JJ. in *Q. E. Tulya*, *I. L. R. 12 Bom. 36*.

Court for relief of insolvent debtors.—Defined, 11-12 *V. C.* 21, S. 92.

Court having admiralty jurisdiction.—Defined, *Act 16*, 1891, S. 3.

Court martial.—Defined, *Act 5*, 1869. *Pt. 1, cl. (e)* (19).

Court of admiralty.—Defined, 33-4 *V. C.* 90, S. 30.

Court of competent jurisdiction.—As used in S. 13 of the Code of Civil Procedure includes a foreign competent court—See *Bababhet v. Narharbhat* *I. L. R. 13 Bom. 224*. See also *Mayaram*

v. Ravji, I. L. R. 24 Bom. at p. 87. See *Ragunath Panjab v. Issur Chunder Chowdhari*, I. L. R. 11 Cal. 153.

As used in S. 537 Criminal Procedure Code—See *Q. E. v. Krishna Bhat*, I.L.R. 10 Bom. 319. See also *Mahammud Baksh and others v. Namdar Khan*, P. R. 1882, No. 118 at p. 350.

See the observations of Knox J. in *Harcharan Singh v. Harshankar Singh*, I.L.R. 18 All. at p. 62.

Court of Justice.—Defined, Act 45, 1860, S. 20.

Court of law.—Defined, 44-5 V. C. 58, S. 190 (36).

Court of lowest grade.—In S. 15 of the *Code of Civil Procedure* refers only to courts to which the *Code* is applicable—*Mir Khan v. Kadarsa* I. L. R. 13 Mad. 145.

Court of the Resident.—Defined, Act 2, 1864, S. 1.

Court of Small Causes.—The expression as used in the last clause of S. 25 of the *Code of Civil Procedure* means a Court properly and strictly so called and does not include a court invested with the jurisdiction of a court of small causes—*per* Parsons and Ranade J.J. in *Ramchandra v. Ganesh*, I.L.R. 23 Bom. 382. See "*Small Cause Court*".

Court which passed a decree.—Defined, Act 14, 1882, S. 649.

Cousin.—Defined, Act 10, 1865, S. 86.

Cousin-german.—Defined, Act 10, 1865, S. 86.

Covenant.—"A covenant " is an agreement between two or more persons by an instrument in writing, sealed, and delivered, whereby some of the parties engage, or one of them engages, with the other or others of them, that some act hath or hath not already been done; or for the performance or non-performance of some specified duty"—*per* Grove J in *Brookes v. Drysdale*, 3 C. P. D. 57 ; but the word 'covenant' in an agreement may be

construed to mean a contract not under seal in order to effectuate the intention of the parties—see *Hayne v. Cammings*, 10 L. T. 341.

Covering.—Defined, Act 4, 1889, S. 5 (3)

Cow.—See “Bull”.

Coweries.—“Are not an instrument of gaming within the meaning of S. 6, of Act 3 of 1867”—per Aikman J. in *Q. E. v. Bhawani*, I. L. R. 18 All. 23.—See “Instrument of Gaming”.

Crabs.—See “Animal”.

Create an interest.—The words “create an interest” as used in the last proviso to S. 3 of the *Hindu Wills Act* (21 of 1870) are to be read “as referring only to the estate or interest which can be given without reference to the further question to whom it can be given” per Wilson J. in *Alangamonjosi Debi v. Sonamoni Dabee*, I. L. R. 8 Cal. at p. 165 S. C. 9 C. L. R. p. 121.

Credible information.—The expression “credible information” as used in S. 5 of Act 3 of 1867 (Gaming and Wagering) “is not a technical legal expression importing that the information must be given upon oath or affirmation. It includes any information which in the judgment of the officer to whom it is given appears entitled to credit in the particular instance and which he believes”—per Plowden J. in *Kada and others v. the Empress*, P. R. 1882, No. 7 (cr).

Creditor.—“The general meaning of ‘creditor’ is a person to whom a debt is due”—S. J. D. Defined Act 9, 1872, S. 126.

Cremation.—“Apart from sentimental considerations cremation is preferable to interment from a purely sanitary point of view. Sanitary reformers have for sometime advocated its adoption in England, but the general opinion was that it was illegal and consequently cremations seldom or never took place. In *R. v.*

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Price, [1883], 12 Q. B. D. however Mr. Justice Stephen decided that if conducted in such a way as not to offend public feeling or prevent proper investigation being made as to the cause of death it is not illegal"—See *E. L. E.*

Crew.—"The crew of a ship generally means the whole ship's company except the master *i.e.* the mate or mates who are next in authority after the master, the carpenter, carpenter's mate boat-swain, sail maker, steward, cook and the able and ordinary seamen and boys, and in the case of a steamship the Engineers and Foremen.—See *E. L. E.*

Crime.—"The violation of a right may in some instances amount to an injury to the particular individual only, but in others it may take the character of an injury to the public at large. When viewed in the first aspect it is usually called a *civil injury*, when in the last, a *crime*". See *Stephen's Commentary on the Common Law of England vol. I. pp. 137, 138 [edition 4th]*.

In *Catell v. Ireson* [*E. B. and E.* 91] Erle J. remarks: "There is one thing strongly indicative that this is a crime, for upon conviction the offender may be ordered to pay a fine, and in default of payment may be imprisoned with hard labour; that punishment is an appropriate to a proceeding for a crime not to any civil proceeding".

Criminal breach of trust.—Defined, *Act 45, 1860, S. 405.*

Criminal Court.—Defined, *Act 5, 1869, Pt. 1, cl. (e) (20)* (am *Act 12, 1894, S. 4*) ; *Act 14, 1866, S. 2* ; *Act 4, 1871, S. 17* ; *Act 14, 1887, S. 2 (1) (i).*

Criminal force.—Defined. *Act 45, 1860, S. 350* ; *Act 15, 1887, S. 3 (6)* ; *Act 5, 1892, S. 2 (6)* ; *Regn. 3, 1881, S. 2* ; *Regn. 2, 1888, S. 3 (4)* ; *Regn. 4, 1890, S. 3 (5).*

Criminal intimidation.—Defined, *Act 45, 1860, S. 503.*

Criminal lunatic.—Defined, 47-8 V. C. 31, S. 18.

Criminal trespass.—Defined, Act 45, 1860, S. 441.

Crops.—"The growing crops of those vegetable productions of the soil which are *annually produced by the labour of the cultivator* are emblements. Fruit trees, therefore, or oak, elm, ash, or other trees, cannot be comprehended under emblements; but there may be a right to take emblements in tea-sets"—See Smith's *Landlord and Tenant* 2nd Ed. p. 318, Co. Litt. 55 b; *Kingsbury v. Collins* 4 Bing, 202; *Woodfull's Landlord and Tenant* 16th Ed. 789.

Crory.—See "Choudhary"

Cross Examination.—Defined, Act 1, 1872, S. 137.

Crossing.—Defined, Act 26, 1881, SS. 123, 124.

Cruelty.—As used in S. 488 *Criminal Procedure Code* is not necessarily limited to personal violence—*per* Brodhurst J. in *Rukmin v. Peare Lal*. I. L. R. 11 All. 480. What constitutes "legal cruelty" does not admit of an exhaustive definition. Charge of an unnatural offence made by a wife against her husband does not amount to "cruelty"—See *Russel v. Russel*, L. R. [1897] H. L. 395.

Culpable homicide.—Defined, Act 45, 1860 S. 299.

Culpable homicide not amounting to murder.—Defined, Act 45, 1860, S. 300 *Exceptions*.

Cultivating raiyat.—Defined, *Beng. Act* 9, 1880, S. 4; *Beng. Act* 8, 1895, S. 2 (a).

Cultivator.—"A person whose occupation is that of a cultivator and takes a lease of land for planting co-conut trees is in respect of that occupation a 'cultivator' within the meaning of sch. ii, Art 13 (b) of the *Stamp Act* 1 of 1879"—*per* Telang J. in *Ramchandra Vasudeva shet v. Bhaji Kusaji*, I. L. R. 15 Bom, 73; by this term "only those persons are connoted who actually

cultivate the soil themselves, or who cultivate it by members of their household, or by their servants, or by hired labour, and with their own or hired stocks. The class of husbandmen or actual agriculturists is meant; not farmers, middlemen, or lessees, even though cultivation may be carried on to some extent by such persons in the area covered by their lease"—*per* Stuart C. J. Straight and Tyrell JJ. in *Stamp Reference*, 1. L. R. 5 All. at p. 363.

Cumulative sentence.—"An expression occasionally used as an equivalent for concurrent or successive sentences"—*E. L. E.*

Currency department.—See "Department of Paper Currency"

Currency note.—Defined, Act 20, 1882, S. 3 (2).

Custody.—Defined, Act 14, 1887, S. 72 (2).

Custom.—"A custom is a rule which in a particular family or in a particular district has from long usage obtained the force of law"—*per* Sir Barnes Peacock in *Hurpurshad v. Sheo Dyal*, L. R. 3 I. A. at p. 285. It must be (1) *ancient* [See *Hurpurshad v. Sheo Dyal Supra*; *Lala v. Hira Singh*, 1. L. R. 2 All. 51; *Juggmohan Ghose v. Manickchand*, 7 M. I. A. 282; *Amrit Nath Chowdhari v. Gouree Nath Chowdhari*, 6 B. L. R. 238; *Raja Nagendra Narayan v. Raghunath Narayan Dey* W. R. (1864) 20; *Ramalakhmi Ammal v. Sivanantha Perumal Sethurayer*, 17 W. R. 553; *Perumal Sethurayer v. M. Ramalinga Sethurayer*, 3 M. H. C. R. 77; *Gopalayyan v. Raghupatiayyan*, 7 M. H. C. R. 254; see also *Ramasami v. Appava*, 1. L. R. 12 Mad. 14 and *Bhau Nanaji Etput v. Sundrabi*, 11 B. H. C. R. 271]; (2) *continued, unaltered, uninterrupted, uniform, consistent* [See *Lala v. Hira Singh Supra*; *Jameelah Khaton v. Pagrel Ram*, 11. W. R. 250; *Beni Madhab Banerji v. Jai Kishun Mukerji* 7 B. L. R. 155;

Jagmohan Ghose v. Manickchand, Supra; *Amrit Nath Chowdhari v. Gouri Nath Chowdhari, Supra*, *Raja Nagendra Narayan v. Raghunath Narayan Dey, Supra*; 17 *W. R. Supra*; *Patel Vandavan Jeykisan v. Patel Manilal Chunder, I. L. R. 16 Bom. 470*; 3 *M. H. C. R. Supra*; *Surendra Nath Roy v. Mussammat Heramoni Burmoneak* 12 *M. I. A. 81*; *Tara Chund v. Reeb Ram, 3 M. H. R. 57*; *Rajkishen Singh v. Ramjoy Sarma Mozumdar, I. L. R. 1 Cal. 195*; *Jagmohan Dass Mangal Dass v. Sir Mangal Dass Nathubhoy, I. L. R. 10 Bom. 543*; (3) *peaceable and acquiesced in* [*Lala v. Hira Singh Supra*]; (4) *reasonable* [*Hurpurshad v. Sheo Dyal, Supra*; *Lala v. Hira Singh, Supra*; *Lutchmipat Singh v. Sadaulla Nuskyo, I. L. R. 9 Cal. 698*; *Runsordas Bhojilal v. Kesri Singh Mohan Lal, 1 Bom. H. C. R. 229*; *Arlapa Nayah v. Narsi Keshavji* 8 *Bom. H. C. R. (A. C.) 19*; *S. C. I. L. R. 8 Bom. 408*; *Raja Varma Valia v. Ravi Varma Kunhikutty, I. L. R. 1 Mad. 235*]; (5) *certain and definite* [*Hurpurshad v. Sheo Dyal Supra*; *Raykishen Singh v. Ramjoy Sarma Mozumdar, Supra*; *Lala v. Hira Singh, Supra*; *Lachman Rae v. Akbar Khan, I. L. R. 1 All. 440*; *T. Doorga Pershad v. T. Doorga Koeri* 20 *W. R. 157*]; (6) *compulsory and not optional to every person to follow or not. The acts required for the establishment of the customary law must have been performed with the consciousness that they spring from a legal necessity* [*Tara Chund v. Reeb Ram* 3, *M. H. C. R. 57*; *Gopalayyan v. Raghupatiayyan, 7 M. H. R. 254*]; and (7) *must not be immoral* [*Chinna Unimary v. Tegrai Chetti I. L. R. 1 Mad. 168*; see also *Sankralingam Chetti v. Subban Chetti, I. L. R. 17 Mad. 479*; *Ghasite v. Umrao Jan L. R. 20 I. A. 193*; *S. C. I. L. R. 21 Cal. 149*].

Sir Perry C. J. in *Khojah Momen's case* (*Perry's O. C.* at p. 121) observes: "It appears to me that if a custom has been proved to exist from time whereof the memory of man runneth

not to the contrary, if it is not injurious to the public interests, and if it does not conflict with any express law of the ruling power, such custom is entitled to receive the sanction of a court of law".

"A custom may be (1) *Private*, for instance, family customs and usages termed *Kulachar* or in Upper India *rasm wa rawaj-i Khandan*, or (2) *general* which is defined to include customs common to any considerable class of persons [S. 48 *Evidence Act Explanation*, or (3) *Public*.

Public custom is nowhere defined in the Evidence Act. But regard being had to the admissibility of hearsay testimony a distinction has (in *English law*) been made between *general* and *public* customs: The term "public" being strictly applied to that which concerns every member of the State, and the term "general" being confined to a lesser, though still a considerable portion of the community"—See *Amir Ali and Woodroffe's Law of Evidence* p. 75.

Customs authority.—See "Chief custom authority".

Customs collector.—Defined, *Act 8, 1878, S. 3 (c)*; *Act 9, 1879 S. 3*.

Customs' officer.—See "Chief customs officer"; "Chief officer of customs".

Customs port.—Defined, *Act 8, 1878, S. 3 (d)*; *Act 2, 1896, S. 3, (8)*.

Customary easement.—Defined, *Act 5, 1882, S. 18*.

Cypres Doctrine.—"Charities, it is said, are so highly favoured in law that gifts to charities have always received, a more liberal construction than the law will allow in case of gifts to individuals.

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In the case of charitable bequests where from the objects being uncertain, or the persons who are to take not being *in esse*, or the bequest being incapable of being carried into exact execution, or for other like causes, a literal execution becomes inexpedient or impracticable, the court will carry out the will as nearly as it can according to the original purposes, or, as the technical expression is, "*cypres*" ['near to it'] *Henderson's Testamentary Succession* pp. 106, 107 (2nd Ed).

Dacoity.—Defined, *Act 45, 1860 S. 391.*

Dakhilkar.—Ordinarily means “occupant”—But it must be construed in reference to the context and held to mean possessor and manager though without beneficial interest—*per Sir Richard Couch in Thayammal v. Venkatarama Aiyam, 16 I. A. 166.*

Damage.—“Neither in common parlance, nor in legal phraseology is the word damage used as applicable to mischief done to property. We speak indeed of damages as compensation for injury done to the person ; but the term damages is not employed interchangeably with the term injury with reference to mischief wrongfully occasioned to the property”—*per Cockburn C. J. in Smith v. Brown, 40 L. J. Q. B. 218.*

“The whole region of enquiry into damages is one of extreme difficulty. You cannot very often even lay down any principle upon which you can give damages, nevertheless it is remitted to the Jury to consider what compensation in money shall be given for what is a wrongful act. How is every body to measure pain and suffering in moneys counted ? No body can suggest that you can by arithmetical calculation establish what is the exact amount of money which would represent such a thing as the pain and suffering which a person has undergone by reason of an accident. In truth I think it would be very arguable to say that a person would be entitled to no damages for such things. What manly mind cares about pain and suffering that is past ? But nevertheless the law recognises that as a topic upon which damages may be given”.—*per Halsbury L. C. in Owner of Stranger Medicina v. Owner and master and Crew of Lightship, L. R. A. C. (1900) at pp. 116, 117. As used in S. 6 of Act 11 of 1865 is not restricted to damages to personal property, but is wide enough to include damages for any*

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wrongful act—*Sardar Partab Singh v. Sardar Thakur Singh*,
P. R. 1888 No. 100.

Damage by fire—Defined, *Act* 20. 1891, *S.* 173 (3); *Bom. Act*
3, 1888, *S.* 36 *Mad. Act* 3, 1888, *S.* 61.

Danabundi.—See “*Kankut*”.

Dangerous Animals.—On the liability of keeping dangerous animals Lord Denman *C. J.* thus observes :—Whoever keeps an animal accustomed to attack and bite mankind with knowledge that it is so accustomed is *prima facie* liable in an action on the case at the suit of any person attacked and injured by the animal, without any averment of negligence or default in the seeing or taking care of it. The gist of the action is the keeping the animal after knowledge of its mischievous propensities”—See *May v. Burdett*, 1856, 9 *Q. B.* p. 101.

Danagerous Disease.—Defined, *Beng. Act* 3, 1888, *S.* 3 (*aa*).

Dangerous petroleum.—Defined, *Act*, 12, 1886, *S.* 3. (2).

Darogha—See “*Police Darogha*”.

Date of applying.—As used in *Art.* 167 *Sch.* ii of *Act* 9 of 1871 (*Limitation*) See *Faqir Mohammad v. Ghulam Husain*, *I.L.R.* 1 *All.* 580.

Date of issuing notice.—The words “date of issuing notice” as used in *Cl.* 15 *Art.* 167 *Sch.* ii of *Act* 9 of 1871 mean the date on which the order directing the issue of the notice is signed by the Court—*per* Tyrell and Duthart JJ in *Udit Narayan v. Rampartab Singh*, *A. W. N.*, 1881 p. 120.

Date of such judgment.—As used in *S.* 58 of *Bengal Act* 8 of 1869. See *Gouri Ballabh Sircar v. Mohan Lal Sihah*, *I.L.R.* 7 *Cal.* 127.

Date of the decree.—The expression “Date of the decree” as used in Art 179 of the *Limitation Act* means the date the decree is directed to bear under section 205 of the *Code of Civil Procedure*—per Maclean C. J. and Banerji J. in *Ghulam Gaffur Mandal v. Gogan Bibi I. L. R. 25 Cal. 109*. The words “after the date of the decree” do not mean after the date when the decree is drawn up in writing but after the date on which the decree or sentence is pronounced—See *Brenhilda v. British India Steam Navigation Co. 8. I. A. at p. 162, 159 S. G. I. L. R. 7 Cal. 547*.

Date of the sale.—The expression “date of the sale” as used in the third column of Art. 136 Sch. ii of the *Limitation Act* signifies the date of the actual sale and not that of the confirmation of such sale—per Petheram C. J. and Ghose J. in *Kishori Mohan Roy Chowdhari v. Chunder nath Pal I. L. R. 14 Cal. 644*.

Daughter.—Defined, Act 10, 1865, S. 87 ; Act, 1, 1867, S. 21 ; See *Mani Lal Rewadat v. Bai Rewa I. L. R. 7 Bom. 758*.

Daughter in law.—Defined, Act 21, 1870, S. 6.

Dawami.—“Whether the use of this word (*dawami*) imports a perpetual hereditary interest, or whether notwithstanding the use of the word “*dawami*” it may be held that upon the consideration of the object and provisions of patta as well as the surrounding circumstances the intention to grant a perpetual lease does not sufficiently appear is a question of some difficulty”—per Lord Davey in *Maharani Beni Parshad Kuari, v. Dudh Nath Roy, L. R. 26 I. A. at p. 225*.

“The words *hamesha va dawam ke liye* according to several decisions of this Board do not *per se* extend the interest beyond the life of the person who is named”—per Sir R. Couch in *Mohammad Abdul Majid v. Fatma Bibi, I. L. R. 8 All. at p. 48 P. C.*

Day.—The *Jews*, the *Chaldeans* and *Babylonians* begin the day at the rising of the sun; the *Athenians* at the fall, the *Umbri* in Italy at midday; the *Egyptians* and *Romans* from midnight; and so doth the law of England in many cases"—*Co. Litt.* 135 quoted in *S. J. D.*

Days—"The general rule of law is that "days" mean consecutive days, except Sunday is the first or last day; but in mercantile cases it is sometimes otherwise, because mercantile contracts are to be construed with reference to mercantile usage"—*per Alderson B.* in *Brown v. Johnson, Car. and. M.* 444.

Deadly weapon.—See *Q. E. v. Nathu, I. L. R.* 15 *All.* 19.

Dead rent.—Dead rent in a running lease is a "rent payable whether the mines be worked or not"—See *Woodfall's Landlord and Tenant* p. 398 (14th edition).

Dealing.—Alderson B. observes: "I take it that the strict definition of "dealing" is "distributing"—A dealer is one who distributes"—See *Allen v. Sharp, 17 L. J. Ex.* 212.

Death.—Defined, *Act* 45, 1860, *S.* 46.

Debenture.—"This word seems to have originated from "*Deben-turnuhi*" with which various old forms of acknowledgements commenced" *per Chitty J.* in *Levy v. Abercorris Slate and Slab Co.* 37 *Ch. D.* 260—"This is a word which has no definite signification in the present state of the English language"—*per Grove J.* in *British India Steam Navigation Co. v. Commissioners of Inl. Rev.* 7 *Q. B. D.* 165 at p. 171 Lindly J. observes;—"Now what the correct meaning of *debenture* is I do not know. I do not find anywhere any precise definition of it. We know that there are various kinds of instruments

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commonly called debentures. You may have mortgage debentures, which are charges of some kind on property. You may have debentures which are bonds. You may have a debenture which is nothing more than acknowledgements of indebtedness"—*Ibi* at pp. 172, 173. Chitty J. remarks: "So far as I am aware the term "debenture" has never received any precise legal definition. It is comparatively speaking a new term. I do not mean a new term in the English language because there is a passage in Swift where the term debenture is used"—See *Edmonds v. Blaina Co*, 36 Ch. D. 215.

Debt.—"In general", says Blackstone, "whenever a contract is such as to give one of the parties a right to receive a certain and liquidated sum of money from the other (as in the case of a bond for payment of money, or an implied promise to pay for goods supplied, so much as they shall be reasonably worth) a debt is then said to exist between these parties; while on the other hand, if the demand be of uncertain amount, as when an action is brought against a bailee for injury done through his negligence to an article committed to his care, it is described not as a *debt* but as a claim for damages".

As used in S. 131 of the *Transfer of Property Act* means an actionable claim and not a claim which has already passed into a decree—*per* Mc. Donnell and Beverly J. J. in *Afzal v. Ram Kumar Bhindra*, I. L. R. 12 Cal. 610; *per* Parson J. in *Dgdu v. Vauji*, I. L. R. 26 Bom. 502, *per* Stuart C. J. and Straight J. in *Billings v. The Uncovenanted Service Bank*, I. L. R. 3 All. 781.

The word "debt" is not used in the *Succession Certificate Act* (VII of 1889) in its ordinary sense, namely that which a man

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borrowers from another *per O'Kinealy* and *Rampaini JJ.* in *Nendhari Roy v. Musammat Bissesri Kumari* (2 C. W. N. at p. 593) remark: In law we know two kinds of debts, debts which have *accrued due*, and debts not *accruing due*, but which *will be due*. Now the *Succession Certificate Act* refers only to such debts as the deceased could sue upon".

Rent is not a debt within the meaning of S. 4 of *Succession Certificate Act*—See *Nagendra Nath Basu v. Satadal Basini Basu*, I. L. R. 26 Cal. p. 536 (Maclean C. J. and Banerji J.).

As used in Ss. 20. and 21 of *Act 9 of 1871* applies only to a liability for which a suit may be brought and does not include a liability for which Judgment has been obtained—See *Kali Prasonno Hazra and Hira Lal Mundle*, I. L. R. 2 Cal. 468 *Dichee v. Shama Kant Lahri Choudhari*, I. L. R. 4 Cal. 708—Defined. *Act 6, 1882*, S. 130; *Act 7, 1889*, S. 4 (2); *Bom. Act 1886*, S. 7—See "Private debt," "Public debt".

Debtor—As used in *section 2 of Act 27 of 1860* does not include the purchaser of a mortgaged property who is in no sense a debtor—*per Wilson and O'Kinealy JJ.* in *Raghunath v. Poresk Nath Pandit*, I. L. R. 15 Cal. p. 54, see *Baidnath Das v. Shamanand Das*, I. L. R. 22 Cal. 143.

Debts and liabilities—As used in *Act 9 of 1886*—See *Kameshar Parsad, v. Bhikham Narain Singh*, I. L. R. 20 Cal. at p. 625.

Decennial settlement.—See "*Settlement*".

Deceit.—See "*Fraud*".

Decision.—See *Mirza Himmat Bahadur v. Gobindo Pandey*, 5, W. R. p. 93; *Mina Kuari v. Juggat Setani*, 10 I. A. at p. 125.

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As used in S. 12 of the *Court fees Act* "was not intended to mean a mere *ex parte* order by the Court, passed without argument and in the absense at least of one "of the parties—the defendants" *per* Burkiat J. in *Amjad Ali v. Muhammad Israil*, I. L. R. 20 All. at p. 16.

"The word 'decision' in S. 596 of the Code of Civil Procedure means merely the decision of the suit by the Court and cannot like the word 'judgment' be defined as meaning the statement of the grounds on which the Court proceeds to make the decree'—*per* Lord Davies in *Tassaduq Rasul Khan v. Kashi Ram*, I. L. R. 25 All. 109.P. C.

Final Decision.—Defined, Act 14 of 1882, S. 13 *Explanation* 4.

Deck lines.—Defined. 57-8 V. C. 60, S. 437 (1).

Declare.—As used in S. 17 (b) of the Registration Act is equivalent to 'define' or "authoritatively set forth"—See *Wazir Ali v. Asa Ram and others*, P. R. 1894, No. 95.

Declaration.—Defined, Act 45, 1860 S. 200. *Explanation*.

Markby J. observes: "I imagine that by a *declaration*, as distinguished from an *agreement* is meant a declaration of his wishes by the owner with reference to his property not amounting to a contract, and which the maker is at liberty to recall; whereas by an *agreement* is meant something which if correct in point of form is binding on the maker"—See *Selim Seikh v. Baidonath Ghatuk*, 3 B. L. R. at p. 315.

Decoration.—See "*Military decoration*".

Decree.—As used in the *Code of Civil Procedure* does not include the decree of a Revenue Court—*per* Blair and Burkitt JJ. in *Onkar Singh v. Bhup Singh*, I. L.R. 16 All. 496.

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"The definition of "decree" in S. 2 of the *Code of Civil Procedure* means that where the proceeding of the Court finally disposes of the suit, so long as it remains upon the record it is a decree" *per* Petheram C. J. in *J. R. Williams v. J. A. Brown*, *I. L. R. 8 All. at p. 111.*

"Means a decree final in its nature and not an order of an interlocutory nature such as an order of reference to take accounts"—*per* Green J. in *Rustomji Burjorji and others v. Kessowji Naik and another*, *I. L. R. 3 Bom. at p. 166.*

As defined in *Act 10 of 1877*, see the remarks of Jackson J. in *Ranjit Singh v. Mehorban Kuar*, *I. L. R. 3 Cal. 662.*

Decree of court.—Defined, *Act 22, 1886, S. 71.*

Decrees capable of execution.—Defined, *Act 14, 1882 S. 246 Explanation.*

Decreeholder.—Defined, *Act 14, 1882, S. 2; Beng. Act 7 1880 section 6 (a), 8.*

As used in S. 295 of the *Code of Civil Procedure* signifies "bona fide" decreeholder"—See, *In-re Sundar Das*, *I. L. R. 11 Cal. 42; Chaganlal v. Fazarali; I. L. R. 13 Bom. 154; A person who is not entitled to come in under S. 295 of the Code of Civil Procedure and share in the distribution of the sale proceeds is not included within the term "decreeholder" in S. 311 of the Code—See Chhatarpal Singh, v. Jadukul Prasad Mukerji, I. L. R. 20 Cal. 673; Ajodha Prasad v. Nand Lal Singh, I. L. R. 15 All. 318. As used in S. 258 of the Code of Civil Procedure should be read in the plural when there are more decreeholders than one—per Tottenham J. in *Thakur Chander Bhattacharjia v. Davendra Nath Sanyal*, *12 C.L.R. at p. 567.**

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perty, or the ruinous state of buildings, or *latent*,—that is such as the greatest attention would not enable him to discover; *e. g.* the defects in a ship's bottom when sold afloat—See *Dart on the law of Vendors and Purchasers Vol. I. pp. 101 and 102 (sixth edition).*

Defence.—" 'Defence' cometh of the word *defendo*"—*Co. Litt. 127 b*); and as applied to a pleading it does not mean a justification" which is the ordinary signification, but a "denial" (3 *Bla. Com.* 296 cited in *Hasgrave's note to Co. Litt. 127 b*).

Defender of the faith.—"A title used by the sovereign of England since it was first conferred on King Henry the VII by Pope Leo the 10th as a recognition of his controversial writings against Martin Luthor"—*E. L. E.*

Delay in transit.—A delay by a carrier in not starting goods on their destination, is a "delay in transit"—*Brown v. Manchester S. and L. Ry., 8 App. Ca. at p. 703.*

Delegates.—See "*District delegates*".

Delegation.—Defined, *Act 2, 1892, S. 47, Explanation.* "Implies that powers are committed to another person or body which are as a rule always subject to resumption by the power delegating"—*per Lord Coleridge C J. in Hutten v. Clarke, 25 Q. B. at p. 304*", does not imply a parting with powers by the person who grants the delegation but points rather to his conferring of an authority to do things which otherwise that person would have to do himself—*per Wills J. ibi, at p. 395.*

Delivery.—(of goods sold)—Defined, *Act 9, of 1872, S. 90.*

Demand.—Defined, *Act 6, 1870, S. 53 ; Beng. Act 9, 1879, Section 29.*

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Demise.—This word in a lease implies an absolute covenant by the lessor for total and quiet enjoyment, unless there be an express qualifying covenant.—See *Woodfal's Landlord and Tenant*—p. 625 (14th edition).

Demonstrative legacy.—Defined *Act* 10, 1865, S. 137; *Act* 5, 1881, S. 3.

Demurrage.—Demurrage may be generally defined as a compensation paid by the shipper of goods to ship-owner for delay in taking his goods on board or out of the ship which carries them whether under a charter party or a bill of lading—*E. L. E.*

Denial of execution.—A wilful refusal or neglect to attend and admit execution is equivalent to denial of execution within the meaning of the *Registration Act*, (3 of 1877)—*per Trevelyan and Stevens JJ.* in *Kudrattee Begam v. Najibunnissa*, *I. L. R.* 25 *Cal. at p.* 96—See also the cases cited therein.

Department.—Defined, *Act* 5, 1869, *Pt.* 1, *Cl.* (e) (11) (*ins Act* 12, 1894. S. 4.)

Department of paper currency.—Defined, *Act* 20, 1882, S. 3.

Departure.—A departure such as is made an act of insolvency by S. 9 of *Insolvent Act* (11 and 12 *V. C.* 21) is a departure by the debtor personally and cannot be committed by any other person on his behalf—*per Pigot J.* in, *In re Dhanpat Singh*, *I. L. R.* 20 *Cal. at p.* 794.

A departure in pleading is said to be when the second plea contains the matter, not pursuant to his former, and which fortifieth not the same, and therefore it is called *decessus*, because he departeth from his former plea—*Co. Litt.* 304 *a.*

Dependent.—Defined, *Act* 1. 1882. *S.* 3 (*am. Act* 7, 1893, *S.* 3. (3); *Act* 21, 1883, *S.* 6 (3); *Beng. Act* 1, 1889, *S.* 2.

The words “dependent upon a condition” as used in *S.* 25 (*Transfer of Property Act* 4 of 1882) is not the same as a condition attaching to the transfer, for in such a case the transfer, is passed, although the condition is ignored as if not. Dependent means that the condition must be performed before the estate can vest or be enlarged—See *Gour's Transfer of Property Act* p. 101.

Dependent member.—The term ‘dependent member’ of a family does not necessarily mean ‘resident member’—*per* Maclean C. J. in *Siddessary Dasse v. Janardan Sircar*, *I. L. R.* 29 *Cal.* at p. 569.

Dependent taluk.—Defined, *Beng. Regn.* 19, 1793. *S.* 6.

Dependent Taluqdar.—As used in *Regulation* 8 of 1793, See *Raja Sattyanand Ghoshal v. Huro Kishen Dat*, 15 *W. R.* 474.

Deposit.—Defined, *Act.* 5, 1873, *S.* 3.

As used in *Art.* 60 *Sch.* 11 of the *Ln. Act* 15 of 1877 is not used to mean trust—*Ishur Chunder Chaudhari v. Jiban Kumari Bibi*, *I. L. R.* 16 *Cal.* at p. 31; *Perundevitayar Annal v. Kammal Vai Chetti*; *I. L. R.* 18 *Mad.* at p. 392.

In *Ramsukh Bhunjo v. Brohmoyi Dasi* [6 *C. L. R.* 470] White J. was of opinion that the word “deposit” in *Art.*—60 of the *Limitation Act* meant a trust. The learned Judge remarked “I think that the word ‘deposit’ in the *Limitation Act* is distinct from loan points to cases where money is lodged with another under an express trust or under circumstances from which a trust may be implied”—This view was dissented from by Wilson and Okinealy JJ. in *Ishan Chunder Bhaduri v. Jiban Kumari*

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Bibi [I. L. R. 16 Cal. 25]. Those learned Judges held that "for several reasons we think 'deposit' cannot have been used to mean *trust*" Sargent C. J. and Nanabhai Haridas J. in *Ichha Dhanji v. Nalha* [I. L. R. 13 Bom. 338] observed: "But whatever may be the cases to which this article is intended to apply it is at any rate not applicable where the transaction is regarded by the law as a loan..." Candy J. reviewing the cases in 6 C. L. R., 16 Cal. and 13 Bom. [Supra] holds: I hold that a deposit is a loan and something more *i. e.* the depositee stands in a fiduciary position to the depositor"—See *Dorabji Jehangir Ramdiva v. Muncharji Bomanji Panthaki* I. L. R. 19 Bom. 352 at p. 361. Best and Subramanya Ayyar JJ. agreeing with the Clcutta case [Supra] and dissenting from the case in 13 Bom. [Supra] remark: There can be no doubt that an essential distinction exists between *loans* pure and simple to be paid back on demand and *deposits* with a banker similarly payable"—*Perundevitayar v. Nammalvar*, I. L. R., 18 Mad. 390 at p. 392 See also *Tidd v. Overell*, [1993] 3 Ch. 154.

Deposition.—Defined, 44-5 V. C. 69, S. 39.

Depositor.—Defined, Act 5, 1873, S. 3.

Depot.—Defined, Beng. Act 2, 1888, S. 3.

Deputy.—See *Wahid Ali v. Ashraf Husain*, I. L. R. 8 Cal. 732.

Deputy collector.—Defined, Beng. Act 5, 1875, S. 2; Beng. Act 8, 1876, S. 4 (vii); Beng. Act 1, 1879, S. 2; Bom. Act 2, 1890, S. 3 (b).

Deputy collectorate.—Defined, Act 6, 1853, S. 5.

Deputy commissioner.—Defined, Act 20, 1883, S. 3 (g); Act, 9 1886, S. 2 (1); Act 15, 1887, S. 3 (8); Act 3, 1893, S. 2; Beng. Act 5, 1887, S. 2; Bom. Act 1888, S. 3 (e); Beng. Act 3, 1881, S. 2; Regn. 2, 1886, S. 2 (2); Regn. 4, 1890, S. 3 (3); Regn. 5, 1893, S. 3, (2); Regn. 6, 1893, S. 2 (1); Regn. 1, 1894, S. 10 (d).

Deputy inspector general.—Defined, *Bom. Act 4, 1890, S. 3 (a)*.

Derelict.—"Derelict" is a term legally applied to a thing abandoned and deserted at sea by those who were in charge of it without hope on their part of recovering it and without intention of returning to it"—*E. L. E.*

Derration.—"A technical term in Commercial Law meaning the departure of a ship from the course of navigation which is either usual and proper, or one expressly agreed to be followed on the voyage, with accordance to which the contract is made"—*E.L.E.*

Descendant.—Defined, *Act 30, 1839, S. 1 Act 10, 1865, S. 86. Act 1, 1869, S. 21.*

As used in Regulation 29 of 1814 is not confined to the heirs of the body but includes heirs generally according to the particular law applicable to the case.—*per Ghose and Gordon JJ. in Chatardhari Singh, v. Saraswati Kumari ; I. L. R. 22 Cal. at p. 161 ; see also the cases cited therein.*

'Descendant' means children and their children to any degree, and it is difficult to conceive any context by which the word "decendant" could be limited to mean children only" *per James L. J. 6. in Ralph v. Carrick, 11 Ch. D. 873.* The *Prima facie* meaning of "decendants" in ordinary parlance, is all decendants of any degree and their children, and I know of no authority for saying that in any legal document the word "decendants" is merely because it is in collocation with the word "parent", to have any other meaning than it has in ordinary parlance"—*per Brett C. J. ibi.*

Descent.—Defined, *Act 30, 1839, S. 1.*

It is not always used in its strict legal sense ; it may mean "a single step in the scale of geneology"—See *Bickley, v. Bickley, 36 L. J. Ch. 817.*

Description.—The “description” of a person is that which tells what he is ; and where a statute requires that the name, place of abode and description of a person be given, and only the name and place of abode are given there is a total omission of the “description”, not an “inaccurate” description”,—see *R. v. Tugwell*, *L. R.* 3 *Q. B.* 704 ; 37 *L. J. Q. B.* 275.

As used in section 26 of Act 8 of 1859 applies rather to patronymic than to a title such as *Rai Bahadur*—*per* Glover and Mitter JJ. in *Kishen Chand Goleecha v. Meghraj Kobhria Rai Bahadur*, 12 *W. R.* 450.

Desertion.—Defined, *Act* 4, 1869, *S.* 3 (*g*) ; *Act* 14, 1887.

Design.—Defined, *Act* 5, 1888, *S.* 50 (1), See “New and original design”.

Desmukh.—See “*Chaudhary*”.

Despandeah.—The *Qanoongoe* of the present time.

Destination.—“Now what is meant by sending goods ‘to their destination’ ? It seems to me that it means sending them to a particular place, to a particular person who is to receive them there; and not sending them to a particular place without saying to whom”—*per* Brett *M. R.* in *Ex. P. Miles*, 15 *Q. B. D.* 43.

Deterioration.—The word “deterioration” imports the becoming reduced either in quality or in value. It is wide enough to cover a falling off in the value of goods due to their not having been delivered in time to enable the plaintiff to take advantage of the special market—*per* Subramanna Ayyar and Benson JJ. in *Madras Railway Co. v. Govinda Ram*, *I. L. R.* 21 *Mad. at pp.* 175 & 177.

Determination.—As used in the *Charters of Madras and Bombay* is equivalent to “the decree or decretal order” of the *Bengal Charter*—See *Nathoobhoy Ramdass v. Mooljee Madowdass and others*, 2 M. I. A. p. 169 at p. 177.

Determined.—See *Shri Vishwambhar Pundit v. Shri Vasudeva Pundit* I. L. R. 15 Bom. 708; *Shiva Nathji v. Joma Kashi Nath*, I. L. R. 7 Bom. 341.

Detrimental.—to the land or inconsistent with the purpose for which the land was let—A mortgage by an occupancy tenant of his holding is not an act “detrimental to.....was let” within the meaning of S. 93 (4) of the *N.-W. P. Rent Act* (12 of 1881) —See *Madho Lal v. Sheo Prasad Misser*, I. L. R. 12 All. 419 ; per Mahmud J. in *Debi Prasad v. Har Dayal*, I. L. R. 7 All. at p. 693.

Devise.—“The term strictly applies to a testamentary gift of lands or real property, but as a matter of fact, it is often used as equivalent to (the verb) ‘bequeath’ or (the noun) ‘legacy’ in testamentary gifts of personal property”—*E. L. E.*

“The words ‘devise and bequeath are terms of known use in our law the former from Glanville’s time and earlier: In their ordinary sense they signify the declaration of a man’s will concerning the successor of *his own property* after his death. Such a devise or bequest operates by nature of the will, and of that alone”—*S. J. D.* Devise and bequest may be used promiscuously’ —See *Vicker v. Hume*, 21 L. J. Ch. 406.

Deviser.—Defined, *Act 27, 1866, S. 2.*

Devolution.—Devolution of estate by operation of law—See *Wallis v. Smith*, 51 L. J. Ch. 577.

Devolve.—“To ‘devolve’ means to pass from a person dying to a living; the etymology of the word shows its meaning” per Leach M. R. in *Parr v. Parr*, 2 L. J. Ch. 167.

Devusthan.—Grants to Brahmins and others for officiating in temples, or to those who had dedicated themselves to the Deity were in some parts of India as in the Deccan called “devusthan” —See *Phillip's Land Tenures of Lower Bengal*, T. L. L. 1874-75, p. 214.

Devuttur.—A grant for the support of a temple or idol—see *Phillips Land Tenures of Lower Bengal*, p. 214.

Dhani.—The word ‘dhani’ is not in the ordinary or commercial language of the Bombay Presidency equivalent to the “bearer” in the sense that is employed in the Paper Currency and Negotiable Instrument's Act—see *Jetha Purkha v. Ram Chandra Vitholia*, I. L. R. 16 Bom. 689.

Dhara land.—Defined, *Bom. Act 1, 1880*, S. 3. (g).

Dharma.—“The Hindu international writers use the term “Dharma” to signify both religion and law. It literally means ‘that which supports or holds up’ ” 5 C. W. N. at p. iii (notes).

Sir Richard Couch in *Ranchordas Vandrawandas v. Parvatebhai*, 26, I. A. at p. 81) observes:—“The objects which can be considered to be meant, by that word are too vague and uncertain for the administration of them to be under any control” S. C. I. L. R. 23 Bom. at p. 735, See “Charity”

Dharbachch.—“According to Mr. Carnegy *beghadum*, *dharbachch* and *bachh* are synonymous terms; the first of these he defines as ‘village payments by a rate (*bachch*) on *sir* cultivation’ and *dharbachch* as an uneven distribution *Bighadam*, etymologically means, simply rate per *bigha*, *dam* means both money and rate”—*Gazetter N. W. P. Vol. XIII part 1*.

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Dharekari.—Defined, *Bom. Act 1, 1880, S. 3 (6).*

Die without issue.—Defined, *Act 25, 1838, S. 24.*

Diploma.—Defined, 49-50 *V. C. 48, S. 27.*

Direct damage.—Defined, *Beng. Act 2, 1888, S. 207.*

Directly.—This word as applied to the time of doing an act would seem synonymous with *immediately*. "It does not mean instantly" per Cresswell J. in *Duncan v. Tophan* 8 C. B. 231 ; 18 L. J. C. P. ; it means something different from a contract to be performed within a reasonable time"—per Coltman J. ib, *Be. B. 230.*

"The word 'directly' seems to have been used (in S. 13 of the Code of Civil Procedure) in contradiction to the word 'incidentally' and 'collaterally' made use of in the statement of the opinion of the Judges in *Duchess of Kennington's Case* (1776, 2 Smith's L. C. 9th edition 812)—per Banerji J. in *Kasiswar Mukhopadhyaya v. Mahendro Nath Chaudhari*, *I. L. R. 25 Cal. at p. 140*—see "immediately".

Directors.—Defined, 23 *V. C. 14, S. 17.*

Disability.—Defined, 33 *V. C. 14, S. 17.*

Disaffection.—Defined, *Act 45, 1860, S. 124 A. Explanation.*

Strachey J. while charging the jury in *Q. E. v. Balgangadhar Tilak* *I. L. R. 22 Bom. at p. 134* observes :—"I agree with Sir Comer Petheram in the *Bangbasi* case *Q. E. v. Jogendra Chandra Bose*, *I. L. R. 19 Cal. 35*) that *disaffection* means simply the absence of affection. It means hatred, enmity, dislike, hostility, contempt, and every form of ill-will to the Government. '*Disloyalty*' is perhaps the best general term

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comprehending every possible form of bad feeling to the Government." "I agree with Sir Comer Petheram that while *disaffection* means simply the *absence of affection or enmity, disapprobation means disapproval*".—*Ibi* at p. 137. Sir Comer Petheram in the *Banglasi* case, *Sup.* at page 44 remarks: "*Disapprobation* means simply *disapproval*. It is quite possible to disapprove of a man's sentiment or action and yet to like him. The meaning of the two words is distinct"—Parscns J. in *Q. E. v. Ram Chandra Narain*, *I. L. R.* 22 *Bom.* at p. 159 remarks:—it (disaffection) "must be taken to be employed in its special sense as signifying political alienation or discontent, that is to say a feeling of disloyalty to the Government or existing power which tends to a disposition not to obey but to resist and attempt to subvert that Government or power". "Disaffection is a positive political distemper, and not a mere absence or negative of".

Discharge.—Markby J. in *Jankee Singh Roy v. Kulloo Mundle* (9 *W. R.* at p. 179.) observes: "Whether these words ('discharge' and 'release') be used as legal terms or not the word 'discharge' has a more general signification than the word 'release'. The ordinary meaning of the word 'release' when used with reference to a person is to 'set at liberty', whereas the meaning of the word 'discharge' is ordinarily to 'absolve from liability'".

Disclaimer.—"The term *disclaimer* has four principal applications in different branches of the law, *viz.* in the law of trust, in the law of patents; in the law of landlord and tenant and in the law of bankruptcy. In the law of trusts the term refers to the refusal to undertake the office or duties of a trustee. In the law of patents, the term refers to the renunciation, by amendment of the specification of a portion of an inventor's claim to protection. In the law of landlord and tenant the term refers to the

repudiation of that relation by some act on the part of a tenant, whether they hold yearly, quarterly, monthly or weekly, which in law has that effect. In the law of bankruptcy the term refers to the surrender by the trustee of property belonging to a bankrupt, which is of an onerous character"—*E. L. E.*

Disclaime, disclamare, is compounded of *de* and *clamo* and signifieth utterly to renounce"—*Co. Litt.* 102 a.

Discontinued.—As used in art 172, *Sch.* 11 of the *Limitation Act* (15 of 1877) see *Gobind Lal Seal v. Debendra Nath Mallick*, 7 C. L. R. 181, S. C. I. L. R. 6 Cal. at p. 315.

Discontinuance.—"Discontinuance' is an ancient word in the law"—*Litt. S.* 592.

Discontinuation of possession.—As used in art 142 *Sch.* ii *Lim. Act* see *Gobind Lal Seal v. Debendri Nath Mallie I. L. R.* 6 Cal. 311; *Leigh v. Jack. L. R.* 5 Ex. Div. 264; *Sundar and others v. Mussammat Rohansu and other P. R.* 1893 No. 104 (civil).

Discontinuous easement.—Defined, *Act* 5, 1882, S. 5.

Discretion.—By the word "discretion" (as used in the Specific Relief Act) is not meant an arbitrary or capricious discretion, dependent upon the mere pleasure of the judge, but that sound and reasonable discretion, which governs itself as far as it may, by general rules and principles but at the same time which withholds or grants relief according to the circumstances of each particular case, when these rules and principles will not furnish any exact measure of justice between the parties—See *Story's Equity Jurisprudence Vol. I. p. 729* (12th edition). "It is a judicial discretion exercised according to something like a settled rule and in such a way as to prevent the defendant doing wrongful act and thinking that he could pay damages for it"—*per Jessel*

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M. R. in *Smith v. Smith*, L. R. 20 Eq. at p. 505; In *Aynsley v. Glover* (L. R. 18 Eq. at p. 555) the same learned judge observe "it is a sound and reasonable discretion to be reasonably exercised" "it must have regard to all the circumstances of the particular case"—per Bacon V. C. in *Greenwood v. Holnsey*, L. R. 33 Ch. D. 471; per Kekwich J. in *Martin v. Price*; L. R. (1894), 1 Ch. at p 290; 63 L. J. Ch. 289.

"When applied to a Court of justice, means sound discretion guided by law. It must be governed by rule, not by humour it must not be arbitrary, vague, and fanciful; but legal and regular" [per Lord Mansfield in *Rex v. Wilkes*, 4 Burrow's Reports 2539]; "is to be exercised on judicial grounds—not capriciously, but for substantial reasons" [per Jessel M. R. in *re Taylor* 4 Ch. D at p. 160; per Lord Blackburn in *Doberty v. Allman*, 3 App Cas at p, 728; and it must be exercised within the limits to which an honest man competent to the discharge of his office ought to confine himself—per Lord Kenyon, in *Wilson v. Rastall*, 4 T. R. 757.

Disease.—Defined, *Beng. Act* 8. 1880 S. 2.

Diseased.—Defined, *Act* 29, 1879, S. 2.

Dishonestly.—Defined, *Act* 45, 1860, S. 24. The phrase "intending to take dishonestly any moveable property" in S. 378 I. P. C. means "with the intention of gaining by unlawful means property to which he is not legally entitled"—"To gain property by unlawful means" means "to gain the thing moved for the use of the gainer and not the gaining of it for a time for a temporary purpose"—per Petheram C. J. and Beverly J. in *Prosonna Kumar Patia v. Uday Sant*. I. L. R 22 Cal. 669.

As used in S. 471, I. P. C. See *Q. E. v. Haradhan*, I. L. R. 19, Cal. 391—See also the observations of West J. in *Reg.*

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Rahimal, I. L. R. 1 Bom. at pp. 105. 106,—See also P. R. 1882 No. 135.

Dishonoured by non-acceptance.—Defined, *Act 26, 1881, S. 91.*

Dishonoured by non-payment.—Defined, *Act 26, 1881, S. 92.*

Dismissal.—The 'dismissal' of a case not compoundable under *S. 214, Indian Penal Code* on parties coming to an amicable settlement is equivalent to *discharge* under *S. 215 Criminal Procedure Code*—*per West and Nanabhai Hari Das JJ. in Reg. v. Devama and Somchekar, I. L. R. 1 Bom. at p. 44.*

Dismissed with costs.—The expression "dismissed with costs" used with reference to an appeal means that the party appealing and losing the case should pay the costs incurred by the respondent in defending the Lower courts' decision—*per Loch and Glover JJ. in Singh and others v. Lalla Kalucharan, 3 W. R. p. 21 (Miscellaneous appeals).*

Disposal.—As used in *S. 372 I. P. C.* see *Srinivasa v. Annasami I. L. R. 15 Mad. at p. 329.*

Disposition of unowned lands.—Defined, *Act 18, 1881, S. 41.*

Disproved.—Defined, *Act 1, 1872, S. 9.*

Dispute—As used in *S. 530 Criminal Procedure*, means "a reasonable dispute, *bonafide*, dispute, a dispute between parties who have each some semblance of right or supposed right."—*per Field J. In the matter of the petition of Gobind Chander Moitra, I. L. R. 6 Cal. at p. 841, S. C. 8 C. L. R. at p. 222.*

Disqualified proprietor.—Defined, *Beng. Act 4, 1870 S. 1.*

Dissent.—See *Imperative v. Bhawani Bin Panduji and Sakhran bin Khundoji, I. L. R. 2 Bom. 526.*

Distant kindred—According to Mahammadan Law the term "distant kindred" includes all relations who are neither sharers nor

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residuaries—See *Abul Serrang v. Putee Bibi*, *I. L. R.* 29 Cal. 738.

Distinct cause of action—As used in *S. 43 Civil Procedure Code* see *Ambi Kittulama I. L. R.* 17 Mad. 23.

Distinct subject—See “Subject”.

Distrained property—Defined, *Act* 2, 1881 *S.* 169 (*ad Act* 14, 1886, *S.* 4).

Distraining officer—Defined *Mad. Act* 6, 1867, *S.* 6.

Distrainer—Defined *Act* 12, 1881, *S.* 169 (*ad. Act* 14, 1886 *S.* 4).

Distress—Defined, *Act* 12, 1881, *S.* 169, (*ad. Act* 14, 1886 *S.* 4).

Distribution (of assets)—Defined, *Act* 2, 1874, *S.* 54 *Explanation*.

District—Defined, *Act* 29, 185^a, *S.* 61; *Act* 8, 1873, *S.* 3 (8); *Act* 3, 1877, *S.* 3; *Act* 13, 1879, *S.* 3; *Act* 10, 1882, *S.* 7; *Act* 14, 1882, *S.* 2, *Act* 5, 1886, *S.* 3 (1); *Act* 1, 1890, *S.* 2 (1) *Beng. Act* 6, 1873, *S.* 3; *Beng. Act* 1, 1876 *S.* 2; *Beng. Act* 7, 1876, *S.* 3 3 14; *Beng. Act* 9, 1880, *S.* 4; *Beng. Act* 2, 1882, *S.* 3; *Beng. Act* 7, 1887 *S.* 1, *Bom. Act* 4, 1890, *S.* 3 (d); *Mad. Act* 5, 1884, *S.* 3 (i); *Regn.* 1, 1894, *S.* 10 (c).

District collector—Defined, *Beng. Act* 1, 1895 *S.* 4 (8); *Mad. Act* 1, 1891, *S.* 3 (8).

District court—Defined, *Act* 4, 1860, *S.* 3 (3); *Act* 3, 1877, *S.* 3; *Act* 6, 1882, *S.* 3; *Act* 14, 1882, *S.* 2; *Act* 11, 1886, *S.* 3 (13); *Act* 5, 1888, *SS.* 4 (g) and 50, *Act* 7, 1889, *S.* 3 (1); *Act* 18, 1890, *S.* 4 (11); *Regn.* 1, 1894, *S.* 11 (e).

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As used in the *Registration Act* must in the case of regulation province be taken to import the ordinary zilla Court—See *Reasat Husain v. Haji Abdullah I. L. R. 2 Cal. 131.*

The court of the judicial commissioner and not that of a deputy commissioner is the “district court” in Chota Nagpur within the meaning of *SS. 2 and 344 of the Code of Civil Procedure*—See *Jainarain Singh v. Madhusudan Singh I. L. R. 16, Cal. 13.*

District delegates—Defined, *Act 10, 1865 S. 235 A, Act 5, 1881, S. 52,*

District forest officer—Defined, *Mad. Act 5 1882 S. 2.*

District judge—Defined, *Act 10, 1865, S. 3; Act 4, 1869, S. 3 (2) (am. Act 18, 1884 S. 2); Act 5, 1881, S. 3; Act 10, 1897, S. 3 (15); Mad. Act 1, 1889 S. 5; N. & O. Act 1, 1887, S. 2 (14); N. & O. Act 3, 1892, S. 2 (4); N. & O. Act 2, 1896, S. 5 (3), Regn. 1, 1894 S. 10 (e).*

See *Dayal Chandra Sahai v. Nobin Chandra Sarvadhi-kary, 16 W. R 235; Ram Sundari Dassi v. W. Verner, 13, B. L. R. 189, Issur Chandra Sen v. Bipin Behari Roy, 16 W. R. 132.*

District magistrate—Defined, *Act 11, 1886, S. 3 (12); Act 5, 1892, S. 2 (3); Act 8, 1887, 3. 4 (c); Mad. Act 7, 1884, 3-29.*

District munsiff—Defined, *Mad. Act 1, 1889, S. 5.*

District police—Defined, *Bom. Act 8, 1867, S. 1,*

District police station—Defined, *Bom. Act 8, 1867, S. 22.*

District Superintendent—Defined, *Act 5, 1861, S. 1, (ins Act 8, 1895 S. 1); Bom. Act 8, 1867, S. 1; Bom. Act 4, 1890, S. 3 (a); Regn. 3; 1881, S. 2; Regn. 1, 1894, S. 10 (g).*

Diversion.—As used in *Sch. ii cl. 35 (i) of the P.S. C. C. Act IX of 1887* See *Peria Karuppa v. Palumzandi*; 1. L. R. 18 Mad. 28.

Dividend.—The word “dividend carries no spell with it Applicable to various subjects, it is not intelligible without having the matter to which it is meant as referring, and of course when there is a context it is liable to be affected by that context. Ordinarily it means share of profits—*per* Knight Bruce L. J. in *Henry v. G. N. Ry*, 27 L. J. Ch. at p. 18.

Division.—Defined, *Mad. Act 1884*, S. 3 (b).

Divisional canal officer.—Defined, *Act 8*, 1873, S. 3.

Dock.—Defined, *Bom. Act 6*, 1879, S. 3 (8); *Mad. Act 2*, 1886, S. 3 (10).

Document.—Defined, 52-3 V. C. 52, S. 8 *Act 45*, 1860, S. 29; *Act 1*, 1872, S. 3; *Act 1*, 1880, S. 3; *Act 15*, 1889, S. 2, (3); *Act 10*, 1897, S. 3 (16); *Mad. Act 1*, 1891, S. 3 (g).

“The words ‘document’ and ‘instrument’ are used interchangeably in the *Registration Act 3 of 1877*”—*per* Telang J. in *Jokarmal v. Tejram Jagrup*, 1. L. R. 17 Bom. 235.

Domestic animal.—An animal which either by habit or special training lives in association with man is a “domestic animal”—*S. J. D.*

An elephant is not a domestic animal—See *L. R.* 1194, 2 Q. B. 319.

Domestics.—Domestics or menial servants are servants employed in a house, or in rendering personal services to, or in close personal relation with, the employer—The term includes not only ordinary household servants; but grooms, gardeners and the like—See *Nicoll v. Greaves* 1864, 33 L. J. C. P. 259.

Phear J. [in *Dhanno Sirang v Upendra Mohan Tagore* 8 B. L. R. at pp, 248-43] remarks: “It has been held in England

that a distinction was to be drawn between in-door and out-door servants, among the whole body of the servants who are in a greater or less degree personal to the master, and minister, to his ordinary wants in and about the house, and 'domestic' has been held properly to designate those employed and dwelling in-doors, in contradistinction to those employed and dwelling out of doorsThe like reasons however, certainly do not seem to me to arise out of the circumstances of servants in this country, whether forming the household establishment of native gentlemen or of English residents".

Domestic purposes.—See "Supply of water for domestic purposes"

Domicile.—The word is of modern introduction in the English language. Cunningham's *New Complete Law Dictionary* published in 1771 does not contain the word. In the time of Charles II. it was spoken of by Sir Leoline Jenkins as a term 'not vulgarly known'.

A short and precise definition of the word has not yet been hit upon. Phillimore describes it as "a residence at a particular place accompanied by positive or presumptive proof of an intention to remain there for an unlimited time—Professor Dicey in his *Conflict of Laws* at p. 79 says: (It) is in general the place or country which is in fact his permanent home, but in some cases the place or country which whether it be in fact his home or not is determined to be his home by a rule of law"—See *E. L. E.*

Dominant heritage.—Defined, *Act 5, 1889, S. 4.*

Dominant owner.—Defined, *Act 5, 1882, S. 4.*

Donatio mortis causa.—"Is a gift made in contemplation of death, and upon condition that it is to take effect only in case of the death of the donor"—*E. L. E.*

Done.—An act to be "done by" a person is, in general will done by his agent, unless it has to be done by himself—See *S. J. D.*

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Donee.—Defined, *Act 4, 1882, S. 122.*

Donor.—Defined, *Act 4, 1882, S. 122.*

Doshi (sinner).—See *Theagashya v. Krishna Sami, I. L.R. 15 Mad., at p. 216.*

Doul bandobast.—See *Phillip's Land Tenures of Lower Bengal, T. L. L. 1875 p. 166.*

Drain.—Defined, *Act 17, 1884, S. 2 (ins. Act 21, 1891, S. 1) ; Bom. Act 3, 1888, S. 3 (u) ; N. & O. Act 3, 1894, S. 3 (b).*

"I think, 'a drain or water course' is applied to that sort of conveyance by which you direct the course of water ; and when you can follow the course of the water, and when you can correct any mischief which arises from an impediment to a flow of the water, when you can do the repairs" *per Fry L.J. in Croft v. Rickmansworth 58, L. J. Ch. 14 ;* "I understand by a 'drain' something conveying liquid away and into and through which liquid may continuously pass"—*per Lopes L. J. ibi.*

"Drain' is used in various senses in English Law according to the subject matter to which it is applied. Its primary meaning is a passage, pipe or open channel for the removal of water or other liquid, specially from land or houses"—*E L. E.*

Drainage connection.—Defined, *Act 17, 1884, S. 2 (ins. Act 21, 1891, S. 1.)*

Drainage work.—Defined, *Act 8, 1873, S. 3 (3) ; Beng. Act 3, 1876 S. 3 (3) ; Bom. Act 7, 1879, S. 3 (3).*

Dramatic piece.—Defined, *5-6 V. C. 45, S. 2.*

Drawee.—Defined, *Act 26, 1881 S. 7.*

Drawee in case of need.—Defined, *Act 26, 1881, S. 7.*

Drawer.—Defined, *Act 26 1881, S. 7.*

Drift.—Defined, *Mad. Act 7, 1871 S. 1.*

Drift-way.—"A way along which a man has a right to drive cattle"
—*E. L. E.*

Drug.—Defined, *Beng. Act 2, 1888, S. 3.*

Duct.—Defined, *Regn. 8, 1887, S. 2 (5).*

Due course.—See "Holder in due course"; "Payment in due course"

Due execution of a will.—"Implies not only that the testator was in such a state of mind as to be able to authorise and to know he was authorizing the execution of a document as his will, but also that he knew and approved of the contents—per Pigott and Banerji JJ *Woomesh Chander Biswas v. Rashmohini Dassi*; *I. L. R. 21 Cal. 279.*

Duly registered.—As used in *S. 50 of Act 111 of 1877 (Registration)* means duly registered under that Act and not under any prior Act—per Parsons J. in *Shivaram v. Saya*, *I. L. R. 13 Bom. at p. 283.* In *Sriram v. Bhagirathi Lal*, *I. L. R. 4 All. at p. 230* Stuart C. J, however, observed: "At the same time the opinion that the expression 'duly registered' in the section (50) only applies to documents registered under the Act of 1877 itself is, I allow, a reasonable and beneficial view of its meaning, and I wish I could believe that such was its true intention, but for the reasons I have indicated I seriously doubt whether such an intention was meant". See also *Dhan Mal and others v. Ganga Ram* *P. R. 1893 No. 95.*

Duly stamped.—Defined, *Act 2 of 1899, S. 2, Sub-sect (II)* the words "duly stamped" as used in *S. 3 of the Stamp Act (1 of 1879)* signify "stamped or written upon paper bearing an impressed Stamp"—See *Radha Kant Shaha v. Abhoychurn Mitter*, *I. L. R. 8 Cal. 721.*

Dur-ijara.—See "Ijara"

Dur-putni.—See Putni.

Dur-kutkina.—See "Kutkina"

During.—A contract for goods to be shipped 'during' specified month implies a continuous Act of shipping—*per* Lord Hatherlay, in *Bows v. Shand* 2 App. Ca. 455.

During the continuance of the agency.—As used in Art 89, Sch. ii of the Limitation Act (15 of 1877) See *Babu Ram v. Ram Dyal*, 1. L. R. 12 All. 541.

During the suit.—See *Hirabae v. Dhungibhoy Domanji*, 1.L.R. 17 Bom. 146.

During the tenancy.—See *Mahesh Dat Pandey and Durga Pande v. Seetal Sonar*, N.W.P.H.C. R. 1869 p. 50 (App. Civil).

Dwell.—A corporation can only dwell where it carries on business—See *Taylor v. Crawford Gas Co.* 24 L. J. Ex. 233.

"To 'dwell', 'dwelling' are expressions nearly equivalent to 'reside', 'residence'. A person may dwell in two or more places, and a member of Parliament residing in London for about three months, in the year would 'dwell' there as well as at his country seat"—*S.J. D.*

Dwelling.—"The words dwelling or residence are synonymous with domicile or home, and mean that place where a person has his fixed permanent home, to which whenever he is absent he has the intention of returning"—*per* Spankie and Oldfield JJ. in *Fatma Begam v. Sakina Begam*, 1. L. R., 1 All. at p. 52—See also *Gopal Chunder Sircar v. Kunnodhar Moochee*, 7. W. R. 349 (Civil).

Sir John Edge remarks: "If the case in 1. L. R. 1 All. (*Supra*) is good law, it appears to us that although we are each of us

living in Allahabad and will each of us have to be here for some time to come, we must be taken to be residing in England"—*Abdul Rahim v. Ajodhia*, *All. W. N.* 1902, at p. 116.

In a case in which the defendant carried on business at Chunder-Nagar and for that purpose he at times resided there and had a house in Hoogly occupied by his wife and children, Paul J. observed: "We think however that for whatever purpose he may have gone there, while he has a house at Hoogly where his family resides, and there is an *animus revertendi*" that family dwelling house must be considered to be his dwelling place. He may no doubt remain during the day at one house and sleep at another, but his dwelling place must be taken to be that where his house is, and his house is where his family resides"—See *Kashee Nath Koer v. Deb Kristo Raman Das*, 16 *W. R.* 240 at p. 244 (civil) *Narinjan Das v. Pandit Ram Kishen P.R.* 1879 No. 32 (civil).

A temporary residence is not a dwelling within the meaning of Cl. 12 of the *L.P.* The word *dwell* must be construed with reference to the particular object of the enactment in which it occurs—See the observations of Telang J. in *Goswami Shri, Girdharji Maharaj v. Shri Govardhanlalji Girdharji Maharaj*, *I. L. R.* 18 *Bom.* p. 290 at p. 292; *Saminatha Pillang & Co. v. Varisai Mahomed Ravattan*, 2 *Mad. H. C. R.* 304—"The word *dwelling* is to be taken in its popular sense. Like many other words it is however more easily understood than defined"—per Scotland C. J. and Holloway J. in (*Pilly and Co. v. Varisai Mahomed Ravattan*, 2 *Mad. H. C. R. Supra* at p. 305)—See also *Framji Cowesjee Marker v. Hormusjee Cawasjee Marker*, 1 *Bom. H. C. R.* p. 220.

Sir James W. Colville while delivering the judgment in *Orde v. Skinner* *L. R.* 7 *I.A.* at p. 205 [*S.C. I.L.R.* 3 *All.* 91] observed "And if the defendant can be said to have had any permanent dwelling place on the plains and within the ambit to the Skinner estate,

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he would not the less dwell there according to the proper and legal construction of the word because for health or pleasure he was passing the hot season on the hills when the plaint was filed"—"A man, however, may have more than one dwelling-place"—*ibi* "That place is properly the domicile of a person in which he has voluntarily fixed the habitation of himself and his family not for a mere special and temporary purpose but with a present intention of making it his permanent home unless and until something shall occur to induce him to adopt some other permanent home"—*per* Kindersley V. C. in *Lord v. Colvin*, 28 L. J. Ch. 361 at p. 366.

Earnest.—The deposit as *earnest* and as *part-payment* are two distinct things—Fry L. J. in *Howe v. Smith*, [27 Ch D. at pp. 101, 102,] observes: “The practice of giving something to signify the conclusion of the contract, sometimes a sum of money, sometimes a ring or other object, to be repaid or redelivered on the completion of the contract, appears to be one of great antiquity and very general prevalence. It may not be unimportant to observe as evidence of this antiquity that our own word ‘earnest’ has been supposed to flow from a *Phœnecian* source the *appabevi* of the *Greeks*, the *arra* or *arrha* of the *Latins* and the *arrhes* of the *French*. It was familiar to the law of *Rome*, and without going into the distinctions of that law on the subject it will be enough to observe that the general rule appears to have been that expressed in the *Institutes* iii, 24. Furthermore the earnest did not lose that character because the same thing might also avail as part payment. From the Roman law the principles relating to the earnest appeared to have passed to the early jurisprudence of England”. “In case of an earnest if the purchaser makes default the earnest is forfeited while in the case of a part-payment if the purchase is completed, the sum is to be taken in part-payment” —*ibid.*

Pollock B. [in *Collins v. Stimson*, 11 Q. B. D. pp. 142, 143.] observes: According to the law of vendor and purchaser the inference is that such a deposit is paid as a guarantee for the performance of the contract, and when the contract goes off by default of the purchaser, the vendor is entitled to retain the deposit”.

Easement.—Defined, *Act 15, 1877, S. 3* ; *Act 5, 1882, S. 4.*

The term includes *profits a prendre*—It has not been used by the Legislature of this country in the restricted sense in which it is used in English Law so as to exclude *profits a prendre—per* Macpherson and Banerjee JJ. in *Dukhi Mullah v. Halway*, *I.L.R. 23 Cal. at p. 59.*

Easement impliedly released—Defined, *Act 5, 1882, S. 38*

Explanation.

Easement of necessity—Defined, *Act 5, 1882, S. 13.*

East India Company—The “operations of the Dutch (in India) had created circumstances which out of the smallest and meanest elements, were destined to operate powerfully upon the destiny of England and India alike. The particular element which turned the scale of events, as it were by grain, was the price of pepper, concerning which article the Dutch contrived to possess the monopoly in the English market. Prior to the year 1599, their price had been six shillings per pound, but they raised it until it reached six shillings, and afterwards eight shillings. This proved too much even for British endurance. On the 22nd of September the merchants of London held a meeting at Founders Hall, ostensibly to protest against the said exorbitant price of pepper. The Lord Mayor presided, and the result of the meeting was that in Founder’s Hall was founded the *first East Indian Company*, which was persevered with, eventually incorporated by Royal charter of Queen Elizabeth, on the 31st of December, 1600, its full title being: ‘*The Governor and Company of Merchants of London trading to the East Indies*’, and the capital was £70,000. A rival company was chartered by Oliver Cromwell in 1665, and a still stronger company got incorporated in 1608 as “*The General Society Trading to India*” with a capital of two million sterling.” “This last company was known as the English, as distinguished from the first or London company, but they eventually made friends and amalgamated in 1702 as “*The United Company of Merchants of England Trading to the East Indies*, and the amalgamation was so strong that it advanced to the then Government a loan of £3, 190000 at 3 per cent. in consideration of which the Government conceded a monopoly of trade to all places bet-

ween the Cape of good Hope and the Straits of Magellan." "By an Act of 1858 the *East India Company* was finally abolished, and all its property and powers were vested in the Crown". "And such is the ultimate result this day of that sturdy protest against the advancing price of pepper, which so deeply moved the quaint imaginations of the ancestors of so many of the existing citizens of London"—*Russel's India's Danger and England's Duty*.

East Indian Stock—Defined, 36 V. C. 17 S. 2.

Edition—An edition consists of many copies as are issued to the public at a time; and where a work is stereotyped, every fresh issue is a new edition—See *Reade v. Bentley*, 27 L. J. Ch. 254. In the same case Wood V. C. at p. 259 remarks: "I apprehend the meaning of the word 'editions' is the putting forth the work at successive periods; and whether that is done by moveable type or by stereotype does not seem to me to make any substantial difference".

Effect—The effect of a cause is anything which would not have happend but for that cause; and it is none the less an effect of such a cause, because it has been developed or accelerated by something supervening"—*S J. D.*

Effects—Defined, 57-8 V. C. 60, S. 742. The word *effects* will, it seems, comprise the entire personal estate of a testator, unless restrained by the context within narrower limits"—See *Jarman on Wills Vol. I. p. 706 (edition 1893)*; standing alone will not comprise *reality*—*Ibi p. 678*.

Either—"Originally 'either' had much of the meaning of 'both' For some centuries however its normal meaning has been 'one or other'"—*per Rigby L. J. in Peakworth, In re Smith v. Parkinson, [1899] 1 Ch. D. at p. 650.*

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Education.—"Education" means training up the young in general learning ; not teaching for a business or profession"—*S. J. D.*

Ekjaddi.—As I understand the term *ekjaddi* when used in a *wajib-ularz* in these Provinces it means *persons descended from a common ancestor through the male line*"—*per* Burkitt J. in *Chattar Singh v. Kalyan Singh*, *I. L. R.* 23 *All.* 32 ; *Moulvi Ilahi Bux v. Koki Mali* ; *P. R.* 1895 *No.* 37 at p. 418.—See the observations of Roe J. in *Devi Das v. Makhan Din* *P. R.* 1885 *No.* 69 (*civil*).

Election.—See *S. 35 Act 4 of 1882*. See the observations of Jessel M. R. in *Regers v. Jones & Ch.*, *D.* 1876 p. 688.

Electric line.—Defined, *Beng. Act 9, 1895, S. 2 (d)*.

Electricity.—Defined, *Act 13, 1887, S. 2 (1)* ; *Beng. Act 9, 1895, S. 2 (c)*.

Elephant.—See "Domestic animal"

Eligible.—As applied to the selection of persons means "either 'legally qualified' or fit to be chosen"—*per* Lord Chelmsford in *Baker v. Lee*, 8 *H. L. Ca.* 495 at p. 522.

Embankment.—Defined, *Act 32, 1855, S. 2* ; *Act 13, 1877, S. 2* ; *Beng. Act. 6, 1873, S. 3* ; *Beng. Act 2, 1882 S. 3*.

Emblements—"Emblements" is the right which the occupier of land (or his personal representatives) has to reap in peace the crop which he sowed, when his occupation has been determined by his death or otherwise unexpectedly comes to an end from a cause beyond his control"—*Co. Litt.* 55a,—56a [*quoted in S. J D.*].

Emigrant.—Defined, *Act 21, 1883, S. 2 (2)* ; *Beng. Act 1, 1889, S. 2*

Emigrant-vessel.—Defined, *Act 21, 1883, S. 3 (8)*.

Emigrate.—Defined, *Act 1, 1882, S. 3 [am. Act 7, 1893, S. 3 (2)] Act 21, 1883, S. 6 (1)* ; *Beng. Act 1, 1889, S. 2*.

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Emigration.—Defined, *Act 21, 1883, S. 6 (1)*.

Emoluments.—Defined, *Mad. Act 3, 1895, S. 4*.

Employed.—Defined, *Act 15, 1881, S. 2*.

“The word ‘employed’ in this section (S. 249 of the Bombay Act 3 of 1888) is obviously used in its ordinary sense, *i.e.* caused to be engaged in doing some service. There is nothing in this section which shows that the words were intended to signify the nature of employment, as being from day to day, or occasional, or regular all the year round”—*per* Ranade J. in *Municipality of Bombay v. Ahmad Bhoj Haribhoj*, I. L. R. 23 Bom. at p. 531.

Employer.—Defined, *Act 1, 1812, S. 3*.

Employment.—There is a difference between an “office” and an “employment”, every office being an employment but there are employments which do not come under the denomination of offices; such as an agreement to make hay, herd a flock &c., which differ widely from that of a manor—See *Reg v. Ramajirao v. Jeobajirao*, 12, B.H. R. at p. 5.

Enabling statute.—“An enabling statute is a statute which makes it lawful to do something which would not otherwise be lawful. Such Statutes or Acts are passed for a variety of purposes; for instance to authorise the taking of land compulsorily to carry out some public work, or to legalise what would otherwise be a public or private nuisance”—*E. L. E.*

Enactment.—Defined, *Act 10, 1897, S. 3 (17)*.

Enam.—In some parts of India grants made by the Sovereign during the Mahamman period went under the name of *enams*. The name *enam* seems, like the word *jageer*, to be a general term including almost all assignments of revenue—See *Phillip's Land*

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Tenures of Lower Bengal, T. L. L. 1874-75 p. 206; See "Altamgha."

Encroachment.—Unlawful gaining upon the right or possession of another—*Jacob's Law Dictionary*—See Bom. Act 2, 1876, S. 29.

Encumbrance.—See "Incumbrance".

Endorsed.—See "Indorsed".

Endorsee.—See "Indorsee".

Endorsement.—See "Indorsement".

Endorser.—See "Indorser".

Enemy.—Defined, 43-5 V. C. 58, S. 190 (20); Act 5, 1869, Pt. 1, cl. (e) (13) (*ins* Act 12, 1894, S. 4); Act 14, 1887, S. 2 (1) (g).

Enforce.—See "Recover".

Engage, Engagement.—Synonymous with "to contract" and a "contract"—*E. L. E.*

Engineer.—Defined, *Beng. Act* 6, 1873, S. 3; *Beng. Act* 2, 1882, S. 3; *Beng. Act* 8, 1895, S. 2 (b); *Bom. Act* 6, 1879, S. 24; *Mad. Act* 1, 1884, S. 3 (g) (*am. Mad. Act* 2, 1892, S. 3).

English mortgage.—*Act* 4, 1882, S. 8 (e).

Engross; Engrossing; Engrossment.—1 (a) copying out a statute or legal right in a large, fair, legal hand (b) the copy so made—*E. L. E.*

Enhancement or reduction of rent.—Defined, *Act* 16, 1887, SS. 27, (4), 28 (4).

Enjoyment.—Defined, *Act* 5, 1882, S. 15, *Explanation* 1.

Enquiry.—See "Inquiry".

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Entire estate.—As used in *S. 37 Act 11 of 1859* see *Preonath Mitter v. Kiran Chandra Roy I. L. R. 27 Cal. 290.*

Entitled.—“Means entitled in interest or entitled in possession. The interpretation is in each case a question of construction and no definite rule can be laid down”—*E. L. E.* See also the observations of Kindersley, V. C., *Wilton v. Colvin*, 25 *L. J. Ch.* 853, 854.

“May mean (entitled in possession as well as in reversion or remainder)—*per Kindersley*, in *Archer v. Kelly*, 29 *L. J. Ch.* at p. 912, “but it seems that a mere contingent interest dependent on the happening of some future event will not be comprised in the words entitled to”—*S. J. D.*

Entitled to act.—Defined, *Act 1, 1894, S. 3 (g).*

Entry.—Any the least degree of it with any part of the body, or with an instrument held in the hand (for a *burglary* and *house breaking*) is sufficient—*Stephen's Commentaries on the Law of England Vol. IV p. 178.*

Equipping.—Defined, 33-4 *V. C. 90, S. 30.*

Equity.—“The word ‘equity’ is used by lawyers and legal writers in various senses. Of these by far the most important is its meaning as the name of what Austin proposed to call “Chancery Law”, and what can only be defined as that portion of remedial justice which was formerly exclusively administered by a Court of equity as contradistinguished from that portion which was formerly exclusively administered by a Court of common law.....”.

“The equitable jurisdiction of the Court of Chancery owed its origin to the petitions for redress of private grievances which were, in early times, addressed to the King or his council, in cases when the remedies provided by the criminal law were inadequate or

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unavailable It was founded upon the judicial authority, forming part of the Royal prerogative under which so late as the reign of James I the King still claimed power to intervene in matters of private right. In the 14th Century it became the regular course to refer these petitions to the Chancellor, and soon afterwards the petitioners began to address themselves to him directly. The jurisdiction of the Chancellor sitting alone can be traced as far back as the reign of Richard II. The frequency of such applications to the Chancellor led to the institution of a regular Court"—*E. L. E.* See "Justice, Equity and good conscience".

Erect a building.—Defined, *Act 3, 1888, S. 337 (2)*.

Erect any building—Defined, *Act 18, 1889, S. 52, Explanation; Regn. 5, 1886, S. 85, Explanation.*

Erected or placed.—As used in *S. 294 of Bengal Municipal Act (Beng. Act 3 of 1884)*—see *Eshan Chunder Mitter v. Banku Behari, I. L. R. 25 Cal. 161.*

Erect or re-erect any building—Defined, *Act 17, 1884, S. 75 (4) (am. Act 21, 1891, S. 4); Act 20, 1891, S. 94.*

Erect or re erect any house not being a hut—Defined, *Beng. Act 3, 1884, S. 240 (ins. Beng. Act 4, 1894 S. 68).*

Error, defect or irregularity.—The expression "Error, or defect &c" as used in *S. 591 of the Civil Procedure Code* means "error, defect &c" in procedure or law—See *Sarkali v. Murli-dhar, I. L. R. 12 All. at p. 202.*

Escape.—"In the widest sense of the term an escape is when one that is arrested gaineth his liberty before he is delivered by course of law'. But it is usually confined to cases when the prisoner gets away without the use of force or the custodian voluntarily

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or negligently lets the prisoner out of his custody. When the prisoner is by force or fraud released by others against the will of custodian it is termed *rescue*”—*E. L. E.*

Escrow.—When the maker of an instrument under seal expresses his intention that it shall not be immediately operative the instrument is called “*escrow*”.

Esquire.—“The title is not one of dignity but as it is termed of worship. According to Sir Edward Coke every one is entitled to be termed a esquire who has the legal right to call himself a gentleman.....” *E. L. E.*

Established for value.—Defined, *Act 13, 1876 S. 10 (of Act 14, 1882, S. 618.*

Established usage.—The words established usage as used in S. 53 of the Bengal Act (8 of 1885) do not refer to a practice previously prevailing between the landlord and his tenant, but to the established usage of the *pergunnah* in which the holding is situate—See *Hira Lal Das v. Mathura Mohan Roy Choudhari, I. L. R. 15 Cal. 714.*

Estate.—Defined, *Act 1, 1869, S. 2 ; Act 7, 1870, S. 7 Explanation; Act 3, 1878, S. 3 ; Act 1, 1882, S. 3 ; Act 8, 1885, S. 3 (1) ; Act 16, 1887, S. 4 (g) ; Act 17, 1887, S. 3 (1) ; Act 9, 1889, SS 4 (2) 9 (2) ; Beng. Act 7, 1868, S. 1 ; Beng. Act 4, 1870, S. 1 ; Beng. Act 6, 1873, S. 3 ; Beng. Act 5, 1875, S. 2 ; Beng. Act 7, 1876, S. 3 (2) ; Beng. Act 8, 1876, S. 4 (viii) ; Beng. Act 9, 1879, S. 3 Beng. Act 6, 1880, S. 3 ; Beng. Act 9, 1880, SS. 4, 40 A. (ins. Beng. Act 2, 1881, S. 4) ; Beng. Act 2, 1882, S. 3 ; Beng. Act 8, 1895, S. 2 (b) ; Bom. Act 5, 1879, S. 3 (5) ; Mad. Act 2, 1894, S. 4 (am. Mad. Act 3, 1895) ; Mad. Act 3, 1896, S. 2 ; N. & O. Act 5, 1894, S. 3 (3) ; Regn. 1, 1886, S. 3 (b) ; Regn. 6, 1893, S. 2 (4)*

“ ‘Estate’ comes from ‘*stando*’ because it is fixed and permanent, and imports the most absolute property that a man can have”—*per* Holt C. J. in *Bridgewater v. Bolton*, 6 Mod. 109.

As used in S. 265 C. P. C. (14 of 1881) See *Secretary of State for India v. Nandan Lal*, I. L. R. 10 Cal. 135.

Estoppel.—Defined, Act 1, 1872, S. 115. “An ‘estoppel’ to use the words of Lord Coke ‘is when a man is concluded by his own act or acceptance to say the truth’ which means he is not allowed, in contradiction of his former self, to prove what he now choses to call the truth. Thus the plea of *res judicata* proceeds upon grounds of public policy properly so called, whilst an *estoppel* is simply the application of equitable principles between man and man—two individual parties to a litigation”—*per* Mahmood J. in *Sita Ram v. Amir Begam*, I. L. R. 8 All. at p. 333. An *estoppel* may be said to exist when a person is compelled to admit that to be true which is not true, and to act upon a theory which is contrary to truth. This formula nearly approaches a correct definition of estoppel—*per* Bramwell L. J. in *Sim v. Anglo-American Telegraph Co.* 5 Q. B. D. 1888, at p. 202. “*Estoppel* cometh of a Fr. word *estoupe* from whence the English word *stopped*, and it is called an estoppel, or conclusion, because a man’s own act or acceptance stoppeth or closeth up his mouth to allege or plead the truth”—*Co. Liti* 352 a.

Eunuch.—Defined, Act 27, 1871, S. 24.

European.—Defined, Act 24, 1855, S. 15.

As used in S. 451 of the Criminal Procedure Code means *per sons born in Europe*—*per* Edge C. J. in *Q. E. v. Moss*, I. L. R. 16 All. at p. 93.

European British subject.—Defined, Act 21, 1879, S. 3 ; Act 10, 1882, S. 4 (a) ; Act 8, 1890, S. 4 (7)

European-officer—Defined, *Act 5, 1869, Pt. I (e)*.

Evade.—Everybody agrees that the word (*evade*) is capable of being used in two senses one which suggests underhand dealing and another which means nothing more than the intentional avoidance of something disagreeable"—*per* Lord Hob House in *Simms v. Registrar of Probates* [1900] *A. C.* 323 ; See also *Bullivant v. Attorney-General for Victoria*, [1901] *A. C.* 196.

Events.—The word *events* in the phrase "the costs shall follow the events" "is a *nomen collectivum*, and may be said to be equivalent to *result*. Suppose that the word *result* had been placed instead of the word *events* could it then be said that there could only be one result? Surely not; *event* and *result* may both comprise several things"—*per* Bramwell L. J. in *Mayers v. Defries*, 49 *L. J. Ex.* at p. 270.

Every—"Dr. Johnson tells us in his Dictionary that 'every' was formerly spelt 'everich', that is 'ever each'; and that the true meaning is 'each one of all'. The word may be used in this sense although other lexicographers give another meaning to it"—*per* Campbell L. C. in *Brown v. Jarvis*, 29 *L. J. Ch.* 595.

Eviction.—"The word 'eviction' has in latter times been understood to mean what formerly it was not intended to express. Formerly it meant what was expressed by the language of Pleading, 'evicted', *expelled*, *removed* and *put out* describing the different modes in which it might take place—"eviction", from *evincere*, to evict or disposses by course of law, was used originally when the person having the permanent title asserted it and expelled his tenant. But that sort of eviction is not absolutely necessary in order to operate as a suspension of the rent, and this word is now used when that has been done which deprives the tenant of the enjoyment of the premises, and the rent is there suspended, and the right of the Landlord to recover it is gone. The word 'eviction' has come to have a popular meaning, and to be applied

to every kind of expulsion in fact. Now getting rid of the old notion of an eviction, it may be taken to mean, not a mere trespass without anything more—because, though every eviction implies a trespass, every trespass does not amount to an eviction but something of a more permanent character done by the landlord with the intention of depriving the tenant of the enjoyment of the whole or part of the demised premises. If that be shown the eviction may be in various ways”—*per* Jervis C. J. in *Upton v. Townend*, 25 L. J. C. P. 51. See also *Dhanput Singh v. Mahomed Kasim Ispahani*, I. L. R. 24 Cal. 296.

Fabricating false evidence.—Defined, S. 192, *Indian Penal Code*.

Fact.—Defined Act 1, 1872, S. 3. As used in S. 13 of the *Indian Evidence Act* (1 of 1872). See *The Collector of Gorakhpur v. Palakdhari Singh*, I. L. R. 12 All. 1.

Fact in issue.—Defined, Act 1, 1872, S. 3 *Explanation*.

Factor.—“A factor is an agent, but an agent of particular kind. He is an agent entrusted with the possession of goods for the purpose of sale. That is the true definition of a *factor*”—*per* Cotton L. J. in *Stevens v. Biller*, 25 Ch. D. at p. 37.

“There are two extensive classes of mercantile agents, namely, *factors* who are entrusted with the possession as well as the disposal of property; and *brokers*, who are employed to contract about it without being put in possession”—*Smith's Mercantile Law* (10th edition at p. 118) quoted by Brett L. J. in *Ex parte Dixon* 4 Ch. D. 133 at p. 137 and Chitty J. in *Stevens v. Biller*, 25 Ch. D. 31 at p. 34.

Factory.—Defined, Act 15, 1881, S. 2.

Fair and equitable.—As used in S. 5 of Act 10 of 1859, See *Thakurani Dossee v. Bisheshar Mukerji*, 3 W. R. p. 29 [Rulings under Act 10 of 1859].

Fair comment.—"In the case of literary criticism it is not easy to conceive what would be outside that region—i. e. of *fair comment* unless the writer went out of his way to make a personal attack on the character of the author of the work which he was criticizing. In such a case the writer would be going beyond the limits of fair criticism.....Still, there is another class of cases, in which, as it seems to me, the writer would be travelling out of the region of fair criticism. I mean if he imputes to the author that he has written something which in fact he has not written. That would be a misdescription of the work"—per Bowen L. J. in *Merivale v. Carson*, 20 Q. B. D. 275 at p. 284 "I think *fair* embraces the meaning of honest and also of relevancy. The view expressed must be honest and must be such as can fairly be called criticism"—per Collins M. R. in *McQuire v. Western Morning News Company*, L. R. [1903] 2 K. B. at p. 110.

Faisla.—The word *faisla* represents the judgment, not the order or decree—See *Jagarnath Jhaboo v. Judoo Roy Singh*, 4 C. L. R. at p. 388.

Fallow.—Defined, Regn. 6, 1893, S. 2 (5) *Explanation*.

False document.—See "Making a false document."

Falsely charging.—As used in S. 211 of the Indian Penal Code "must be construed along with the words which speak of the 'institution of proceedings'. These latter words are obviously used in a technical and exclusive sense, and the restricted sense

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must be given to the words which relate to a false charge as implying a false complaint"—*per* Ranade J, Q. E. v. Karigowda, I. L. R. 19 Bom. at p. 52."

False property mark.—See "*using a false property mark*".

False trade description.—Defined, Act 4, 1889, S. 2 (3).

False trade mark.—See "*using a false trade mark*".

Family.—Defined, Bom. Act 3, 1874.

"The primary legal meaning of 'family' is not equivalent to *familia* or *famille*, but means 'children'"—*per* Jessel M. R. in *R. Pigg v. Clarke*. 45 L. J, Ch. 849; "includes all persons residing in the house (of the testator at the time of his death) whether dependent members (of his family) or not".—*Per* Sale J. in *Nattomoye Dasee v. Soobul Chunder Law*, I. L. R. 23 Cal. at p. 123,

"The word 'family' [as used in S. 13 of Act 35 of 1858 which provides for the maintenance of the lunatic and his family) we understand to include persons living with the lunatic as members of his family that is to say, persons actually depending upon him for their maintenance"—*per* Ghose and Gordon JJ. in *Chundrabati Koeri v. Mouji Lal*, I. L. R. 23 Cal. at p. 514.

Farmer.—In Regulation 17 of 1827 "is used not as a cultivator of the ground, but as a farmer of the public revenue,—a person namely, who would stand between the Government and the *Ryots* as possessors of the ground in the village: he being as it were, the custodian or Ranger, taking care that the revenue of the Government was collected, and the rights of the Government as against his possessors in the village maintained"—*per* Lord Cairns in *Ruttonji Edulji Shet v. Collector of Tanna*, 11 M. I. A. at p. 313.

Farukhabad rupees.—Defined, *Act 45, 1860, S. 230 (e)*; *Act 6, 1896, S. 1. (2)*.

Fasli ryots.—Tenants were, in former times, classified under different names according to the mode in which they were assessed. Those paying a fixed rate for the *beegah* were called *hari* ryots and those paying according to the crops produced were called *fasli* ryots—See *Phillip's Land Tenures of Lower Bengal, T. L. L. 1874-75 p. 174*.

Fasli year.—"When Akbar began his reign he desired to adopt an universal official year which should correspond to the harvest seasons better than the *Hijri* year (with its changing lunar months) or the *Hindu Samat* era. He began with the 10th September 1555 (A. D) and arbitrarily called it "*Fasli 963*" being the *Hijri* year of his ascending the throne. This era was used for all revenue accounts. The "*Fasli*" in use in the Dakhan was begun by Shahjehan in A. D. 1636 and is somewhat different".

"The agricultural year which is defined in *Tenant and Land Revenue Acts*, is fixed for the convenience of date in enhancing rents and putting an end to tenancies. The year begins on some day between the 15th April and 1st July, as the provincial climate may render convenient. It is not used as a date or era"—*Baden Powell's Land System of British India Vol. I. pp. 13 and 14 [ed. 1892]*.

The term *Fasli year* does not apply to the *Agricultural year* as defined in *Act 19 of 1873 (N. W. P. Land Revenue Act) S. 3 Cl. 8*. The term must be taken to refer to the *Calender Fasli year*—per *Edge C. J. [Blennerhassett J. concurring]* in *Chatarbhuj v. Dwarka Prasad, I. L. R. 18 All. p. 388*. See also the Judgment of Brodhurst and Mahmood JJ, in *Yad Ram v. Amir Singh in A. W. N. 1882 p. 174*.

Father.—Defined, *Act 10, 1897, S. 3 (18)*; *Mad. Act. 1, 1891 S. 3 (30)*. See also "Parent".

Fellow.—Defined *Bom. Act 3, 1888, S. 3 (b)*.

Fellow's election.—Defined, *Bom. Act 3, 1888, S. 3 (j)*.

Fermented liquor.—Defined, *Act 12, 1896, S. 3 (b)*; *Beng. Act 7, 1878, S. 4*.

Ferry.—Defined, *Act 17, 1878, S. 3*; *Act 9, 1890, S. 3 (2)* *Act 2, 1901, S. 2 (a)* *Beng. Act 1, 1885, S. 5*; *Mad. Act 2, 1890, S. 3*.

As used in the *Bengal Municipal Act 3, of 1884* "means the exclusive right to carry passengers across the stream, from one bank to the other on payment of certain prescribed tolls"—*per* Prinsep and Stanley JJ. in *The Government of Bengal v. Senayat Ali, I. L. R. 27 Cal. p. 317*.

Fictitious person.—"In truth, if strictly construed, the words '*fictitious person*' are a contradiction. One may pretend there is a person when there is not. One may assume a character which does not belong to one, but to satisfy the word '*fictitious*' as applicable to a person is assuming in one part of the proposition what is denied in the other. Some of the characters in Sir Walter Scott's Novels may be fictitious in the sense that no person so named ever lived; but if real names are taken, and events and conduct and character attributed by the writer to those real names, are the characters '*fictitious*' because persons of those names identified with a totally different history and different qualities did in point of fact exist at one time?"—*per* Lord Halsbury L. C. in *Bank of England v. Vagliano Brothers* [1891] *App. Cas. at p. 121*.

"The proper meaning of the word '*fictitious*' is '*feigned*' or '*counterfeit*' and not '*imaginary*'"—*per* Lord Macnaghten *Ibid. p. at 161*.

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Fictitious stamp.—Defined *Act 45, 1860, S. 263 (3)*.

Field.—Defined, *Reg. 8, 1887, S. 2 (1)*.

Field embankment.—Defined, *Reg. 8, 1887, S. 2 (3)*.

Fifteen days.—The words “fifteen days” as used in S. 106 of the Transfer of Property Act [4 of 1882] imply a fixation of the shortest period of notice allowed by the section—See *Bradley v. Atkinson, I. L. R. 7 All. at p. 604*.

Filed.—As used in S. 12 of the Court Fees Act (7 of 1870) means something more than ‘presented’ for admission. It implies that the plaint or memorandum of appeal has been admitted and put on the files of the Court. It is used in the same sense in S. 28—*Amjad Ali v. Muhammad Israil, I. L. R. 20 All. at p. 17* Sargent C. J. [*Ram Kesharji Naik v. Nasarvanji Ardesir Wadia* 10, *B. H. C. R. at p. 427*] remarks. “The filing of a written statement does not necessarily make it a part of the record, but is merely for the purpose of notice to the plaintiff, of the nature of the defence”.

Final.—“I conceive that an order is ‘final’ only when it is made upon an application or other proceeding which must, whether such application or other proceeding fail or succeed, determine the action. Conversely I think that an order is ‘interlocutory’ when it cannot be affirmed that in either event the action will be determined”—*per Fry L. J. in Salman v. Warner, [1891] 1 Q. B. at p. 736*.

As used in the last paragraph of S. 588 of the Code of Civil Procedure means final for all purposes—*per Oldfield J. in Azim-ud-din v. Baldeo, I. L. R. 3 All. at p. 561*; as used in S. 378 of Act 8 of 1859 See *Bhyrub Chunder Surmah Choudhary v. Madho Ram Surmah, 11 B. L. R. 423*; as used in S. 5

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of the *Court Fees Act* (7 of 1870) See *Balkaran Rai v. Govind Nath Tewari*, I. L. R. 12 All. at p 152 ; as used in S. 629 of *Act 14* of 1882 See *Gobinda Ram Muna Lal v. Bhola Nath Bhatta* I. L. R. 15 Cal. 432 ; as used in S. 119 of *Act 8* of 1859 See *Keshav Ram Hira Chand v. Ram Chandra Trembak* 8 B. H. C. R. at p. 48 ; as used in S. 595 of *Act 10* of 1877 See *Jageshar Sahai v. Musammatt Murcho Kuar*, 1 C. L. R. 354. *Final and conclusive* as used in S. 61 of *Bengal Act 6* of 1870 see *Nobo Kristo Mukerji v. The Secretary of State for India in Council*, I. L. R. 11 Cal. 632,

Final decree—as used in Art 6 Sch. III of *Bengal Tenancy Act*, see *Baikunth Nath Mitra v. Aghore Nath Bose*, I. L. R. 21 Cal. 387 ; as used in S. 595 (a) of *Act 10* of 1877 See *Ramadhin Mahton v. Ganesh*, I. L. R. 4 All. 238 ; as used in Art. 179 Sch. II. of *Limitation Act* see *Mashait-un-nisa v. Rani*, I. L. R. 13 All. at p 3.

Final order—As used in the definition of an 'instrument of partition' in *Act 1* of 1879 (Stamp), see *Reference Board of Revenue N. W. P.*, I. L. R. 2 All. 664.

Finally disposing of the matter.—The expression "*finally... matter*" as used in SS. 43 and 44 of the *Dakhan Relief Act 17* of 1879 means no more than the expression *amicable settlement* in SS. 41 and 46 of the same *Act*"—*per Sargent C. J.* in *Vasudev v. Narain*, I. L. R. 9 Bom. at p. 19.

Financial Commissioner.—Defined, *Act 16*, 1887, S. 75 (2) *Act 17*, 1887, S. 7 (4).

Financial year.—Defined, 52—3 V. C. 63, S. 22 ; *Act 1*, 1883, S. 2 ; *Act 20*, 1883, S. 3, (5) ; *Act 10*, 1897, S. 3 (19) ; *Ben. Act 3*, 1885, S. 5 ; *Mad. Act 1*, 1891, S. 3 (10) ; *N. and O. Act 1*, 1887, S. 2 (15).

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Fine.—Defined, *Act 14, 1866, S. 2,*

With reference to the word "fine" as used in act. 39 of Schedule I. of the *Stamp Act of 1879* Smyth J. Observed:—"The term 'fine' is a term borrowed from the English Law. One of its meanings in connection with the occupation of land is given in Sheppard's Touchstone (*chap. II. p. 2*) a high authority in such a matter, as "an income or sum of money paid 'at the entrance of a tenant into his land'. Another sense is 'a sum of money paid for the renewal of lease' (*Wharton's Law Lexicon, sub voce*) a covenant, for renewal on payment of a fixed sum by way of fine' or in the name of a fine being not uncommon in English Cases"—*In Rea Reference by the Financial Commissioner of Punjab P. R. 1882 No. 102 at p. 293.*

Firm.—Defined, *Act 9, 1892, S. 239.*

First charge.—Defined, *Act 7, 1878, S. 82; Mad. Act 5, 1882, S. 67.*

First cousin.—Defined, *Act 10, 1865, S. 86.*

First cousin once removed.—Defined, *Act 10, 1865, S. 86.*

Fish.—Defined, *Act 4, 1897. S. 3, (1); Act 1, 1875, S. 2; Ben, Act 2, 1889, S. 2,*

Fish to.—Defined, *Act 7, 1875, S. 2, Reg. 3, 1889, S. 32 (1) (b).*

Fishery.—Defined, *Act 7, 1875, S. 2, Reg. 3, 1889, S. 32 (1) (a).*

Fixed engine.—Defined, *Act 7, 1875, S. 2, Act 4, 1897, S. 3, (2). Ben. Act 2, 1889, S. 2. Reg. 3, 1889, S. 32, (1) (c).*

Fixed rate of rent.—Sir Barnes Peacock C. J. observes: By the term 'fixed rate of rent' I understand not merely fixed and definite sums payable as rent, but also rates regulated by certain fixed principles—such for instance as a certain proportion of the

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gross or of the net produce of every beegha or such a sum of money as would be equal to such a proportion of the produce or such a sum as would give to the ryot any fixed rate of profit after payment of all expenses of cultivation"—*Thakurani Dosse v. Besheser Mukerji*, 3 W. R. at p. 108, (Rulings under Act 10 of 1859,)

Flood embankment—Defined, *Ben. Act 3*, 1876, S. 3 (4). *Bom. Act 7*, 1879, S. 3 (4).

Fluvial action—Defined, *Act 8*, 1885, S. 30 *Explanation*.

Food—Defined, *Ben. Act 3*, 1884, S. 251 (*Am. Ben. Act 3*, 1886, S. 2, *Ben. Act 2*, 1888, S. 364).

Forbidden—As used in clause 3, of S. 4 of *Regulation 11*, of 1825
See *Nobin Kishor Roy v. Jagesh Prasad Gangopudiyā*, 6 B. L. R. at p. 349.

Force—(See also *Criminal force*) Defined, *Act 45*, 1860, S. 349.

Foreign country—Defined, 445 V. C. 53 S. 190 (24); *Act 15*, 1877, S. 3.

Foreign court—Defined, *Act 14*, 1882, S. 2.

Foreign exciseable article—Defined, *Ben. Act 7*, 1878, S. 4.
(*ins. Ben. Act 4*, 1881, S. 3).

Foreign going ship—Defined, 57-8 V. C. 60, S. 742, *Act 1*, 1859, S. 118.

Foreign instrument—Defined, *Act 26*, 1881, S. 12.

Foreign Judgment—Defined, *Act 14*, 1882, S. 2.

Foreign liquor—Defined, *Mad. Act 1*, 1886, S. 3 (12).

Foreign port—Defined, *Act 18*, 1878, S. 3, (*e*) *Act 2*, 1896, S. 3(8).

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Foreign ship—Defined, 41-2 V. C. 73, S. 7, *Act* 10, 1889, *Sch.* 1, *Pt.* 1, *Explanation* 1, (See also *ship of a foreign state*).

Foreign state—Defined, 33-4 V. C. 90, S. 30, 36-7 V. C. 59, S. 2; 36-7 V. C. 88, S. 2; *Act* 4, 1874, S. 2.

Foreigner—Defined, *Act* 3, 1864, S. 1.

Forest—See *Protected forest*; *Reserved forest*; *State forest*; *Village forest*.

Forest offence—*Act* 7, 1878, S. 2. *Act* 19, 1881, S. 3. *Mad.* *Act* 5, 1882, S. 2. *Reg.* 6, 1887, S. 2 (5). *Reg.* 5, 1890, S. 2, (8). *Reg.* 7, 1891, S. 3 (5) *Reg.* 6, 1893, S. 2 (8).

Forest Officer—See *Chief Forest Officer*; *District Forest Officer*. *Village Forest Officers*.—Defined, *Act* 7, 1878, S. 2, *Act* 19, 1881, S. 3. *Mad.* *Act* 5, 1882, *SS.* 2, 34. *Reg.* 6, 1874, S. 2. *Reg.* 6, 1887 S. 2 (1). *Reg.* 5, 1890, S. 2 (3). *Reg.* 7, 1891, S. 3 (1). *Reg.* 6, 1893, S. 2, (2).

Forest produce—Defined, *Act* 7, 1878, S. 2, (*Am.* *Act* 5, 1890, S. 2) *Act* 19, 1881 S. 3, (*Am.* *Act* 5, 1890, S. 15). *Mad.* *Act* 5, 1882, S. 2. *Reg.* 6, 1887, S. 2, (4) [*Am.* *Reg.* 8, 1890, S. 2, (3)] *Reg.* 5, 1890, S. 2 (7) *Reg.* 7, 1891, S. 3 (a). *Reg.* 6, 1893 S. 2, (g).

For ever—See "Always"

Forfeit—"This word means not only an actual taking away of property on breach of a condition but also the doing or suffering a thing which creates a liability to such a deprivation"—*per* Kay *J. In re Levys Trusts*, 30 *Ch. D.* 119 at *p.* 125; there is no distinction between the word "forfeit" as used in S. 35 of the

gross or of the net produce of every beegah or such a sum of money as would be equal to such a proportion of the produce or such a sum as would give to the ryot any fixed rate of profit after payment of all expenses of cultivation"—*Thakurani Dosse v. Besheser Mukerji*, 3 W. R. at p. 108, (Rulings under Act 10 of 1859.)

Flood embankment.—Defined, *Ben. Act 3*, 1876, S. 3 (4). *Bom. Act 7*, 1879, S. 3 (4).

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Forest officer—(See *Chief Forest officer*; *District Forest officer*, *village Forest officers*).—Defined, *Act* 7, 1878, S. 2. *Act* 19, 1881, S. 3. *Mad. Act* 5, 1882, SS. 2, 34. *Reg.* 6, 1874, S. 2. *Reg.* 6, 1887, S. 2, (1). *Reg.* 5, 1890, S. 2 (3). *Reg.* 7, 1891, S. 3 (1). *Reg.* 6, 1893, S. 2, (2).

Forest produce—Defined, *Act* 7, 1878, S. 2. (*Am. Act* 5, 1890, S. 2) *Act* 19, 1881, S. 3, (*Am. Act* 5, 1890, S. 15). *Mad. Act* 5, 1882, S. 2. *Reg.* 6, 1887, S. 2, (4) [*Am. Reg.* 8, 1890, S. 2, (3)]. *Reg.* 5, 1890, S. 2 (7). *Reg.* 7, 1891, S. 3 (a). *Reg.* 6, 1893 S. 2, (g).

For Ever—See “Always”

Forfeit—“This word means not only an actual taking away of property on breach of a condition but also the doing or suffering a thing which creates a liability to such a deprivation”—*per Kay J. In Re Levys Trusts*, 30 *Ch. D.* 119 at p. 125; there is no distinction between the word “forfeit” as used in S. 35, of the

Indian Companies Act 6, of 1882 and the word "penalty" as used in other sections of the Act—Queen Empress v. Moore I. L. R. 20 Cal. 676.

Forfeiture—"Forfeiture" means the 'loss of all interest in the property spoken of"—S. J. D.

Forged document.—Defined, *Act 45, 1860, S. 470.*

Forgery.—Defined, *Act 45, 1860, SS. 463, 464 Explanation;* is used as a general term in S. 463 of the *Indian Penal Code. Queen Empress v. Tulga, I. L. R. 12 Bom. 36.*

Formal adjudication—Defined, *Bom. Act 2, 1863, S. 16 (e); Bom. Act 3, 1863, S. 72 (e).*

Formal warning.—Defined, *Act 9, 1894, S. 46 (1) Explanation.*

Former part of the section.—The expression "former.....section" as used in the 2nd paragraph of S. 50 of the Registration Act 3 of 1877 refers to the whole preceding portion of the section—*Kudar v. Ismail, I. L. R. 9 Mad. 119.*

Former suit.—The expression "former suit" as used in S. 13 Civil Procedure Code, means a previously instituted suit and cannot apply to a suit instituted subsequently to the suit in which the bar is pleaded—*Ghamandi Lal and another v. Bhana Mal and another, P. R. 1895, No. 57.*

Fort.—Defined, *Act 13, 1881, S. 2.*

For the purpose of following in his or their hands such property.—The expression "for the purpose.....property" as used in S. 10, Act 9 of 1871, (Limitation) "means for the purpose of recovering the property for the trusts in question"—per Sir A. Hobhouse in *Balwant Rao Bishwant Chandra Chor v. Puran Mal, 10 I. A. at p. 96.*

Forthwith.—"Means 'now', 'as from this moment', henceforth,"—*per* Kekewich J. in *Keith Prowse & Co. v. National Telephonic Co.* [1894] 2 Ch. D. at p 15.

When a Judge has to do a thing *forthwith* and when the act to be done is judicial and discretionary, it is synonymous with *immediately*—*Grace v. Cernch*, 12, L. J. Q. B. 273; *Heden v. Atlantic Royal Mail Steam Navigation Co.*, 29, L. J. Q. B. p. 191; when ministerial and demandable *ex debito justitio* it means forthwith upon the application of the party entitled to have the act done—*Hancock v. Somes*, 28, L. J. M. C. 196.

"In a contract and the ordinary transactions of life it does not usually mean 'immediately'—[See *Roberts v. Brett*, L. J. C. P. 241: 11 H. L. Ca. 337],, but means with all reasonable celerity"—*per* Tindal C. J. in *Burgess v. Boetefeur*, 7 M. & G. 494.

Jessel M. R. [in *Re Southam Ex p. Lamb*, 1 L. J. Ch. 207; S. C. 19 Ch. D. 169] observes: "I think the word 'forthwith' is to be construed according to circumstances. A covenant to insure man's life, for instance, cannot be complied with in a moment. But where an act required to be done 'forthwith' is one which is capable of being done without any delay no delay can be permitted."

"When a statute requires that something shall be done 'forthwith' or 'immediately' or even 'instantly' it would probably be understood as allowing a reasonable time for doing it"—*Maxwell on statutes* p. 423 (2nd edition) quoted in *Re the Application of Sheshamma*, I. L. R. 12 Bom. at p. 277.

Fraud—defined, Act 9, 1872, S. 17.

"'Fraud,' in my opinion, is a term that should be reserved for something dishonest and morally wrong and much mischief is, I think, done as well as much pain inflicted by its use when

'illegality' and 'illegal' are the really appropriate expressions"—*per Wills, J. Ex p. Watson*, 21 Q. B. D. 301, at p. 309.

"In other words.....the term *fraud* must be used and understood in the common meaning of the word, as it is ordinarily used in the English language, and as implying some base conduct and moral turpitude. With all deference to those who have persistently continued to use the expression *Legal fraud*, which, I believe, was first introduced by Lord Kenyon in 1801, it is certainly a matter of regret that the expression has ever been introduced into legal language. I adopt with regard to that expression the words of Lord Bramwell in *Weir v. Bell* [3 Ex. D. 238, 243] where he says. 'I do not understand *legal fraud*. To my mind it has no more meaning than legal heat, or legal cold, legal light, or legal shade. There never can be a well founded complaint of legal fraud except where some duty is shewn and correlative right, and some violation of that duty and right. And when these exist it is much better that they should be stated and acted on than that recourse should be had to a phrase illogical and unmeaning with the consequent uncertainty"—*per Watkin Williams J in Joliffe v. Baker*, 21 Q. B. D. at p 270.

"Fraud' is an extrinsic, collateral act, which vitiates the most solemn proceedings of courts of Justice. Lord Coke says it avoids all Judicial acts, Ecclesiastical or Temporal"—*per De Grey C. J. in The Duches of Kingston's case* [Howell's State Trials vol. 20 p. 544] quoted in *Nawab Sidhee Nuzur Ali Khan v. Rajah Ojoodhyaram Khan*, 10, M. I. A. at p. 556.

"'Fraud' is the name of something which has been denounced, and seldom superfluously, by moralists, judges and legislators in all ages. 'He that worketh deceit shall not dwell within my House.' The wicked balances and the bag of deceitful weights' or more refined equivalents are still to be heard of wherever

business is done. Yet it has been found most difficult to define for legal purposes what 'fraud' really is, only it is good to remember that the persistent refusal of the Court of Chancery to define 'fraud,' which has become a commonplace in the modern books does not signify any love of vagueness for its own sake, or any desire to exercise mysteriousness and arbitray power. It was a precaution not only against the ingenuity of persons minded to keep themselves just on the windy side of the law, but against another sort of ingenuity, that of jealous and vigilant competetors for business, against unscrupulous ambition within profession, and sometimes against the hostility of sincere but ignorant partisons in politics. 'Fraud' may be described, for most usual purposes as the procuring of advantage to oneself or furthering some purpose of one's own, by causing a person with whom one deals to act upon a false belief"—*Pollock's Law of Fraud in British India* pp. 15—17 (edition 1894) *Constructive fraud*—See *lbi*-pp 39 and 40.

Fraudulent.—"It is better not to use the term 'fraudulent' to transactions which are only such as the law will not allow. Though the term has by rather an unhappy use of language, been applied by Courts of Equity to transactions which are not at all dishonest in their nature"—*per* Lord Hobhouse in *Khoo kwat Siew v. Wodi Taiko Hwat*, 19 *I. A.* at p 18.

Fraudulently—Defined, *Act* 45, 1860, *S.* 25; *Act* 15, 1887, *S.* 3 (6) *Act* 5, 1892, *S.* 2 (6); *Reg.* 3, 1881, *S.* 2; *Reg.* 2, 1888, *S.* 2 (4); *Reg.* 4, 1890, *S.* 3 (5).

As used in *S.* 464 of the *Indian Penal Code* must mean something different from dishonestly. It must be taken to mean as defined in *S.* 52 of the *Indian Penal Code with intent to defraud*"—*Lalit Mohan Sircar v. Q. E., I. L. R.* 22 *Cal.* at p. 322; as used in *S.* 471, *Indian Penal Code*, See *Q. E. v.*

Haradhan, I. L. R. 19 All. at p. 389; *Q. E. v. Abbas Ali*; I. L. R. 25 Cal. 512. See the observations of West J. in *Reg. v. Ramunat*, I. L. R. 1 Bom. at pp 105, 106; see also *Addul Razuk v. Q. E.*, P. R. 1895, No. 2 Cr.

Free consent—Defined, Act 9, 1872, S. 14.

Free of Revenue—See "*Revenue free*."

Fresh enquiry—See "*Further enquiry*."

From—Defined, Act 10, 1897, S. 9 (1); *Bom. Act*, 3, 1886, S. 3 (22).

From generation to generation—"The words 'from generation to generation' cannot be called technical words: they are not unfrequently used in common with words of a like kind,—such as, 'while the sun and moon endure,'—in Hindi written instruments, and by themselves when so used they do not in their ordinary signification import more than 'absolutely' and 'for ever,'—*per Scotland C. J.* in *Arumugan Mudali v. Ammi*, *Ammal*, 1 Mad. C. R. 400.

They, do not create such an estate as to operate as a bar to alienation by sale—*Rajah Nursing Dev v. Roy Koylash Nath*, 9 M. I. A. p. 55; See *Satheanama Bharathi v. Saravana Bagi Ammal*, I. L. R. 18 Mad. at p. 273.

From my moveable and immoveable property—A stipulation in a bond for the recovery of loan "from my moveable and immoveable property" in case of default does not create a mortgage upon any property of the obligor—*The Collector of Etawah v. Beti Maharani*, I. L. R. 14 All. 162.

From time to time—"The words 'from time to time' are words which are constantly introduced when it is intended to protect a person who is empowered to act from the risk of having completely discharged his duty when he has once acted and therefore not being able to act again in the same direction"—

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per Lord Penzance in *Lawrie v. Lees*, [1881] 7 App Cas. 19 at p. 29.

Fruit—The word “fruit” in legal acceptance is not confined to the produce of those trees which are commonly called *fruit trees* but applies also to the produce of such trees as oak, elm &c.—See the remarks of Bayley J. in *Bullen v. Denning* 5, B. and C. 847.

Fugitive Criminal—Defined, 33-4 V. C. 5 2 S. 26.

Fugitive Criminal of a foreign state—Defined, 33—4 V. C. 56 S. 26.

Funds—Defined, Act 11, 1879, S. 3; *Mad. Act* 1, 1888, S. 2; *Reg.* 4, 1892, S. 2.

Further inquiry—The words “further inquiry” as used in S. 437 of the Criminal Procedure Code (Act 10, 1882) mean the inquiry preliminary to trial which regularly results in a charge or discharge and do not include the trial—*Hari Das Sanyal v. Santulla*, I. L. R. 15 Cal. 608; mean the taking of additional evidence, not the rehearing of the same evidence—*Dursan Lal v. Jhumak Lal* I. L. R. 12 Cal. 522; according to the *Madras High Court* they signify as well a fresh consideration of the effect of the evidence already recorded as a supplemental inquiry upon fresh evidence—per Muthusami Ayyar J in *Q. E. v. Bala Sinna Tambi*, I. L. R. 14 Mad. at p 386; see *Q. E. v. Amir Khan* I. L. R. 8 Mad. 336; *Q. E. v. Dorabji Hormusji*, I. L. R. 10 Mad. 13; *Harbhaj Rai v. Jwala*, P. R. 1887 No. 63.

Further accommodation works—“The works connecting two places for purposes of water supply are not ‘further accommodation works’ within the meaning of S. 12 of the *Indian Railways Act* (9 of 1890)—per Strachey J in *G. I. P. Railway Co. v. The Municipal Corporation of Bombay*, I. L. R. 23 Bom. at p. 366.

Gain—Means “exactly acquisition. Gain is something obtained or acquired. It is not limited to pecuniary gain. In fact we should have to put the word ‘pecuniary’ to show it. It is not ‘gains’ but ‘gain’ in the singular. Commercial profits, no doubt, if acquired are *gain*; but I cannot find any word limiting it simply to a commercial profit. I take the word as referring to a company which is formed to acquire something, as distinguished from a company formed for spending something and in which the individual members are simply to give something away or to spend something and not to gain anything”—*per* Jessel *M. R.* in *Re Arthur Anerage Assn.* 10 App Ca. 546.

Gained—“The lands within the limits of settled estate which had become covered with water and afterwards re-formed are not lands ‘gained’ from the river or sea by alluvion or dereliction within the meaning of this legislation (Regulation 2 of 1819) which is confined to lands so gained since the period of the settlement”—*per* Lord Herschell in *Secretary of State for India v. Fahmid-un-nissa Begam*, 1. L. R. 17 Cal. at p. 602.

Gaining Wrongfully—Defined, Act 45, 1860 S. 23.

Gambling and wagering—“To constitute a wager, the transaction between the parties must “wholly depend on the risk in contemplation,” “and neither must look to anything but the payment of money on the determination of an uncertainty.” But if, one of the parties has “the event in his own hands” the transaction lacks one essential ingredient of a wager”—*per* Birdwood J in *Dayabhai Tribhovan das v. Lukmi Chand Paira Chand*, 1. L. R. 9 Bom. 363.

“A wager is a promise to give money or money’s worth upon the determination or ascertainment of an uncertain event; the consideration for such a promise is either something given by

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the other party, or a promise to give upon the event determining in a particular way"—*Anson's Law of Contract*.

Game—Defined, *Mad. Act 2, 1879*, S. 2.

"The word 'game' is an indefinite word, and seems at various times to have had various meanings; to have at one time included one thing, at one time another; to have had at one time a wider and at another time a narrower signification"—*per Erle C. J in Jeffryes v. Evans* 34 *L. J. C. P.* 263.

Gaming and playing—Defined, *Act 16, 1884*, S. 2 (1).

Garden—"The word 'garden' is nowhere defined in *Act 7* of 1870, but from its occurring in connection with the word houses, we are of opinion that the term refers primarily to a garden in the English sense,—ornamental or pleasure or vegetable, and that parambas do not ordinarily come under that category. We do not however, wish it to be understood that in no case should a paramba be treated as a garden for the purpose of the *Court Fees Act*"—*Audathodan Moidin v. Pullambath Memally*, *I.L.R.* 12 *Mad.* at p. 304 [*Collins C. J.* and Mathusami Ayyar, Parker and Wilkinson JJ].

Garden Grants—"Under both *Afghan* and *Biluch* rule in *Sindh* much liberality was shown in the remission of revenue on land brought under garden cultivation. Garden grants are found scattered all over the province and are not confined to any particular parts of the province. Subject to certain stipulations these lands are transferable"—*Baden Powell's Land System of British India Vol. III* at pp 335 and 336.

Garden-Sardar—Defined *Act 6, 1901*, S. 2.

Gazette—Defined *N. and O. Act. 1, 1887*, S. 2.

Gazetted officer.—Defined, *Act 14, 1887*, S. 2 (1) (b); *Act 1, 1899*, S. 3 (b).

General character.—The words “general character” “may be construed to include general reputation as well as general disposition”—*Adil and Others v. The Empress, P. R.* 1880 No. 6 (cr.)

General custom or right.—Defined *Act 1, 1872, S. 48.*
Explanation.

General meeting.—Defined, *Act 11, 1876, S. 3.*

General officer of the command.—Defined, *Act 2, 1902 S. 2*
(c); *Act 12, 1894, S. 4 (16)*

General repute.—“General repute” within the meaning of S. 117 (3) of the Criminal Procedure Code means the reputation which a man “bears in the place in which he lives amongst all the townsmen, and if it is proved that a man who lives in a particular place is looked upon by his fellow townsmen, whether they happen to be known to him or not, as a man of good repute, that is strong evidence that he is a man of that character. On the other hand if the state of things is that the body of his towns people who know him look upon him as a dangerous man and a man of bad habits, that is a strong evidence that he is a man of bad character, but to say that because there are rumours in a particular place among a certain class of men that a man has done particular acts or has characteristics of a certain kind, those rumours are in themselves evidence, under this section, is to say what the law does not justify us in saying”—*per Sir John Stanley C. J. in King Emperor v. Jagannath, All. W. N., 1903 p. 181.*

General Supply.—Defined *Act 3, 1903, S. 2 (J)*

Gentiles or Gotrajas (from Gotra)—*Gotrajas* referred to in the Hindu Law “are described as descending from one common stock, a male, and derived generally through males, as forming a family though embracing possibly, many females and such

original bond of union is regarded as necessary to the constitution of the *gotra*”—*per* Lord Phillimore while delivering the judgment of their Lordships of the Privy Council in *Bhyah Ram Singh v. Bhayah Uger Singh* 13 *M. I. A.* at p. 391.

Gentleman.—"According to Sir T. Smith, this title is applied generally to those who have nothing to do and can 'live idly'"—*per* Pollock C. B. in *Allen v. Thompson*, 25 *L. J. Ex.* 250. "As for gentlemen they may be made good cheap in this kingdom; for whoever studieth the laws of the realm, who studieth in the Universities, who professeth liberal sciences, and (to be short) who, can live idly and without manual labor, and will bear the port, charge and countenance of a gentleman, he shall be called master and shall be taken for a gentleman,"—*per* Sir T. Smith quoted in *Blackstone's Commentaries on the Laws of England Book I* p. 406.

Gentoos.—"The Portuguese who discovered the way to India used the word *Moros* or *Moors* to describe the Mahammadan feudatories and subjects of the Moghul; other races were included under the general name of *Gentoos*"—*E. L. R.*

Gharwara due.—See *Oudh Cases* vol. 3 p. 204.

Ghatwali Tenure.—"Ghatwal lands were holdings of this kind [*viz.* minor service tenures]—an institution which originated probably in the earliest times and was adopted by all classes of rulers. They were in fact a kind of *jagir* created in frontier territories, so that the holders may be the 'wardens of the marches'"—*Budden Powells Land System of British India Vol. I* at p. 532 (edition 1892).—Then speaking of the peculiar ghatwal tenures of *Deogarh* and other parts in Bengal Mr. Baden-Powell quotes, at p 595 of the same volume the account of it given by Mr. Oldham as follows:—"It was the practice throughout

the district and in the portions transferred from *Birbhum*, *Bhagalpur* and *Murshedabad* for the great zemindars to assign grants of land, generally at the edges of their estates, in selected passes (*ghats*) or other spots suited for forts, to check the incursions of the forest tribes, as the remuneration of the person or family entrusted with the guardianship of the pass, and of the specified number of armed retainers whom he was bound to maintain. This was the general character of the *Ghatwali* tenure. The grants were rent-free. The grantees held while they performed the conditions of their grant. The establishment of retainers varied much in size, according to the purpose for which they were wanted; and the extent of the lands assigned varied in proportion. Some of the holders were wardens of extensive marches, and their successors at this day occupy the position of considerable Zemindars. Other grants were merely for the purpose of checking the ravages of wild beasts. One in particular was given for the destruction of elephants....."

"There are ghatwal grants created under the Mogul rule which have become proprietary tenures, alienable and governed by *Regulation 29 of 1814*, and *Bengal Act 5 of 1859*. Others are on a different footing; they are not alienable without the consent of the superior and the *ghatwal* may be dismissed by the Government or the Zemindar, as the case may be, for misconduct"—*Ibi.* at p. 587.

Gift—Defined, *Act 4, 1882, S. 122.*

Gift made in contemplation of death.—Defined, *Act 10 1868, S. 178.*

Giving false evidence—Defined, *Act 45, 1860, S. 191.*

Going armed—As used in *S. 19 (c) of Act 11 of 1878 (Arms Act)* see *Q. E. v. Bhure*, I. L. R. 15 All. p. 27.

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Good and sufficient cause.—As used in *Cl. 3 S. 18*, of *Beng. Regulation II. of 1803* includes insanity.—*Troup v. The E. I. R. Co.* 7 *M.I.A.* 104.

Good faith—Defined, *Act 45, 1860, S. 52; Act 15, 1877, S. 3; Act 10, 1897, S. 3 (20); Mad. Act 1, 1891, S. 3 (11).*

“It may be stated generally that the words ‘good faith’ have no technical legal signification, but are to be taken in their ordinary acceptation and mean simply honesty in belief, purpose or conduct”—*E. L. E.* See *Bhawoo Jwaji v. Mulji Dyal*, *I. L. R. 12 Bom. 377*. As used in *S. 53* of the *Transfer of Property Act* (4 of 1882) see *Ishan Chander Das Sirkar v. Beshu Sirdar*, *I. L. R. 24 Cal. at p. 828*. As used in *Art. 184 sch. II* and *5* and *10* of the *Limitation Act* (10 of 1871) See *Manik Lal Atmaram v. Munchershi Dinsha Coachman*, *I. L. R. 1 Bom. 269*.

Good will.—“‘Good will’ may be taken, in the words of Lord Eldon, as the probability that the old customers will resort to the old place,”—*per Cotton L. J.* in *Pearson, v. Pearson*, 54 *L. J. Ch. 41*; “must mean every advantage every positive advantage of the late partner not carrying on the business himself—that has been acquired by the old firm in carrying on its business whether connected with the premises in which the business was previously carried on, or with name of the late firm, or with any other matter carrying with it the benefit of the business”—*per Wood V. C.* in *Charlton v. Douglas*, 28 *L. J. Ch. 845*; *per Jessel M. R.* in *Guresi v. Cooper and Co.*, 14 *Ch. D. at p. 600*. See also the observations of *Cranworth L. C.* in *Austen v. Boys*, 27 *L. J. Ch. 714*.

Goods.—Defined, *Act 9, 1872, S. 76; Act 11, 1876, S. 3; Act 4, 1889*

S. 2 (4). Act 9, 1890, S. 3 (9). Act 2, 1896, S. 3 (5). Bom. Act 6, 1879, S. 3 (10). Bom. Act 6. 1886, S. 2 (6). Bom. Act 5, 1888, S. 2 (f). Mad. Act 3, 1883, S. 2 (iv), Mad. Act 3, 1885 S. 3 (4). Mad. Act 2, 1886, S. 3 (12).

Books are covered by the word "goods" within the meaning of Act IV of 1880 (*Indian Merchandise Marks Act*)—*Kanai Das Basaraji v. Radha Shyam Bysuck* I. L. R. 26 Cal. at p 233.

Goods and chattels.—"The words ('goods and chattels') are used in their strict sense in S. 58 of Act 9 of 1850 and do not include fixtures"—per Wilson J. in *Mitter v. Brindban*. I. L. R. 4 Cal. at p. 947. See *Mutty Lull Seal v. Dent*, 5 M. I. A at p 348.

Goods and merchandise.—"The expression 'goods and merchandise, [as used in art.(2) of Sch. II of the Stamp Act 1 of 1879] is not an equivalent for moveable property; but is borrowed from the English Stamp Act, the language which is again taken from the English Statute of Fraud"—per Farran C. J. in *Vohra Mahamadali v. Ramchandra* I. L. R. 22 Bom. at p. 787.

Goods in transit.—Defined, Act 9, 1892 S. 100.

Gordon Settlement.—"What is termed a 'Gordon Settlement' was an arrangement entered into in 1864 by a committee, of which Mr. Gordon, as Collector, was chairman, acting on behalf of Govt. with the *Vatandars* in the Southern *Maharatha* country by which the Government released certain *vatandars* in perpetuity from liability to perform the services attached to their offices in consideration of a *judi* or *quit-rent* charged upon the *vatan* lands. These settlements were given binding legal effect by clauses 2 and 3 of S. 15 of Act III of 1874"—*Appaji Bapuji v. Keshow Shyam Rav. v. Appaji Bapuji*, I. L. R. 15 Bom. 13 at p. 14.

Governing Body.—Defined, Act 21, 1860, S. 16; Act 37, 1850 S. 23.

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Act 30, 1852, S. 12. Act 45, 1860 S. 19, 263. A. (4) ins, Act 3, 1895, S. 2., Act 17, 1864, S. 1 ins. Act 2, 1890, S. 1; Act 2, 1874, S. 3.; Act 14, 1882 S. 2.; Act 13, 1885, S. 31. Act 17, 1885, S. 12 (2). Act 18, 1887. S. S. 18 (2). Act 9, 1890 S. 137 (2); Act 10, 1897, S. 3 (21); Bom. Act 3, 1886, S. 3 (10); Mad. Act. 5, 1882 S. 2.; Reg. 1, 1888, S. 11 (2).

Government of India.—Defined, *Act 45, 1860, S. 16.; Act 10, 1897, S. 3 (22).* Bom, *Act 3 1886. 5 3 (9).*

Government Pleader.—Defined, *Act 14, 1882. S. 2.*

Government Provident Fund.—Defined, *Act 9, 1897, S. 2 (2).*

Government Security.—Defined, *Act 13, 1886, S. 3 (1.)*

Government stores and Equipages.—As used in Cl. 3, S. 87 of *Act V of 1884 (Madras)* include stores and carts belonging to the Government Jails.—*Queen Empress v. Kutti Ali, I. L. R. 20 Mad. 10.*

Government Ward.—Defined, *Act 17, 1885, S. 3 (1). Act 24, 1899, S. 2 (1) Reg. 1, 1888, S. 3. (2).*

Governor—Defined, 33-4 V. C. 14, S. 17. 33-4 V. C. 52., S. 26. 33 4 V. C. 90, S. 30, 36 7 V. C. 88, S. 2 41 2 V. c. 73, S. 7. 44-5 V. 69, Pt. 4, S. 39. 44-5 V. C. 58, S. 190 (27). 47-8 v. c. 31, S. 11. 25-3 v. c. 63. S. 18 (6).

Governor-General—Defined, 44-5 V. C. 58, S. 190 (26).

Governor-General in Council.—See *Government of India.*

Grade—As used in S. 285 *Civil Procedure Code (Act 14, 1882)* see *Turmiklal Harksan Rai v. Kaban Das Khusal, I. L. R. 19 Bom. at p 129.*

Grand children—Defined *Act 10, 1865, S. 86.; Act 20, 1870, S. 6.*

Grant of money or land revenue.—Defined, *Act 23, 1871, S. 3*; as used in *S. 4 of the Pensions Act 23 of 1871*, see *Vyankaji v. Sarjarao Apajirao I. L. R. 16 Bom. 537*.

Grantee.—Defined, *Act 1, 1869, S. 2*.

Granted.—As used in *S. 230 (Act X of 1877)*, is equivalent to the expression “admitted” as used in *S. 245*—*per Prinsep J. in Dewan Ali v. Soroshibala Dabee I. L. R. 8 Cal. 297*—See also *Sher Ali v. Deoki Nandan P. R. 1889, No. 19*; *Misri v. Tulsei Ram P. R. 1887, No. 54*.

“An application under *S. 235 C. P. C.* is granted at the moment when the order is passed ordering execution according to the nature of the application. Except where that order expressly refused any portion of the relief applied for. I would hold that in order to cover and govern all subsequent orders to complete execution according to the nature of the application as registered and over the property specified therein”—*Per Knox J. in Rahim Ali Khan v. Phul Chand I. L. R. 18 All. at p 487. Nilmony Singh Deo v. Bissesswar Banerji, I. L. R. 11 Cal. 744*; see also *Paraga Kuar v. Bhagwan Din. I. L. R. 8 All. 301*; *Rama Dhar v. Ram Dayal Ibid, p 536*.

Granting, refusing or revoking a certificate—As used in *S. 19 Succession Certificate Act 7 of 1889*; see *Bhagwan v. Manin Lall I. L. R. 13 All. 224*; *Bai Devkore v. Lal Chand Jiven Das I. L. R. 19 Bom. 790*, *Radhu Rani Dassi v. Brindabun Chandra Basack I. L. R. 25 Cal. 320*; *Dewan Ali v. Soroshibala Dabi, 10 C. L. R. 111*.

Gratification—Defined, *Act 45, 1860, S. 161 Explanation*.

Grievous Hurt—Defined, *Act 45, 1860, S. 320*.

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Grihast—See *Basdeo v. Gharib Das*, 1 L. R. 13 All. at p 259.

Gross income—Defined, Act 10, 1892, S 2 (2).

Gross neglect—As used in S. 73 of the *Transfer of Property Act*, (4 of 1882); see *Shun Mawn Mull v. Madras Building Co.* 1 L. R. 15 Mad. 268.

Gross negligence—Lord Cranworth in *Wilson v. Brett* (3 Hurlb &c. 337) observed that “he could see no difference between *negligence* and *gross negligence*; that it was the same thing, with the addition of a vituperative epithet”. Mr. Justice Willis agreeing with this dictum remarks “confusion has arisen from regarding negligence as a positive instead of a negative word. It is really the absence of such care as it was the duty of the defendant to use.” See *Grill v. The General Iron Screw Collier Company*, 37 L. J. Rep. (N. S.) C. P. 205 “The use of the term ‘gross negligence’ is only one way stating that less care is required in some cases than in others, as in the case of gratuitous bailees and it is more correct and scientific to define the degree of *care* than the degrees of *negligence*”—per Montague Smith J. *ibid*.

“Of course if intended as a definition the expression ‘gross negligence’ wholly fails of its object. But as there is a practical difference between the degrees of negligence for which different classes of bailees are responsible, the term may be usefully retained as description of that difference more especially as it has been so long in familiar use, and has been sanctioned by such high authority as Lord Holt and Sir William Jones in his *Essay on the Law of Bailment*”—per Lord Chelmsford in *Giblin v. McMullen*, 38 L. J. P. C. at p 28. “It is said that there may be difficulty in defining what gross negligence is; but I agree in the remark of the Lord Chief Baron in the court below when

he says, "there is a certain degree—negligence to which everyone attaches great blame. It is a mistake to suppose that things are not different because a strict line of demarcation cannot be drawn between them"—*per* Crompton J in *Beal v. The South Devon Railway Co.* 3 Hurl's and C. 377.

Gross Value—"Gross Value' is different from 'value'. It is though a convenient, an inaccurate expression like 'gross profits.' The difference between what a thing costs and the larger sum it sells for is not profit if the buying and selling are attended with expense to the trader. Value is net value"—*per* Lord Bramwell in *Dobbs v. Grand Junction Waterworks Co.* 53 L. J. Q. B. 52 S. C. 9 App. Ca. 49.

Growing crops—"Growing crops' are of two principle kinds, *natural* and *industrial*; and accordingly they are generally referred to as *fructus naturales*, those which are the natural growth of the soil, such as grass, timber, the fruit of trees &c. and *fructus undustreales*, those produced by human labour in sowing and reaping"—*E. L. E.*

Guarantee.—See *Continuing guarantee, Contract of guarantee.*

Guaranteed Company—Defined, 42 & V. C. 41, S. 1.

Guardian.—Defined, Act 13, 1880, S. 2 (3) Act 8, 1890, S. 4 (2) *Bom. Act* 5, 1880, S. 2. *Bom. Act* 3, 1874, S. 4. *Bom. Act* 1, 1877 S. 2 (2). *Bom. Act* 4, 1879, S. 2 (2). *Bom. Act* 1, 1892, S. 46 (6). *Mad. Act* 4, 1884, S. 3 (XVII). *Mad. Act* 5, 1884, S. 3 (xv).

As used in Sec. 51 of the *Guardians and Wards Act* (8 of 1890). means "a guardian who was such at the time the Act came into force"—*per* Telang J. in *Ballabh Dass Hira Chand v. Krishna Bai* I. L. R. 17 Bom. 566, at p. 569.

As used in S. 440 C. P. C. (Act 14 of 1882 as amended by Act 8 of 1890) when applied to a lunatic means the manager of his estate—*Bai Divali v. Hira Lal*, I. L. R. 23 Bom. 403.

Guardian and ward—"The expression 'guardian and ward' is in common legal use to express well known and definite legal relation distinct from the relation equally definite, and equally well known by the expression of principal and agent"—*Sher Ali Khan v. Khwaja Mahammad Khan*, P. R. 1891 No 84, at p. 419.

Guest.—A guest is a person who uses the inn either for a temporary or a more permanent stay, in order to take what the inn can give. He need not stay the night. I confess I do not understand why he should not be a guest if he uses the inn as an inn for the purpose merely of getting a meal there. There is not much to be said, upon the authorities for the proposition that a person in order to be a guest at the inn must be a wayfarer or traveller. I quite agree that in olden times wayfarers were more often 'guests' than any body else. The inn keeper's liability is said to arise because he receives persons, *per Wills J. in Orchard v. Bush & Co.* [1898] 2 Q. B. D. at p. 287.

Habitable room—Defined, *Act 3, 1899, S. 3 (19).*

Habitually.—The intention of the Legislature in using the word ("habitually") in S. 142 of the Bengal Municipal Act (3 of 1884) "was not to use it in any sense capable of being exactly defined as a matter of law, but to leave it to the Court to determine in such case as a matter of fact whether, the use was habitual or not." It imports some degree of frequency and that in order that a cart may be said to be 'habitually used' within the limits of any Municipality it must be used within those oftener than it is not, regard being had to the total extent of use within and without the Municipality to which in due course of business it is or might reasonably be put,"—*per Macpherson and Banerjee JJ. in The Legal Remembrancer on behalf of the Local Government v. Shama Charan Ghose, I. L. R. 23 Cal. 52 at p. 54.*

Hack-stable.—Defined, *Mad. Act 1, 1884, S. 3 (99) Mad. Act 4 1884, S. 3 (XIV.)*

Hackney carriage.—Defined, *Act 14, 1879, S. 2; Ben. Act 2, 1891 S. 3 (2) Mad. Act 3, 1899 S. 3.*

Half a year.—"A 'half a year' is not the same as 'six months' but means half the days of the year" *S. J. D.*

Hamesha (Always and for ever).—The use of the word "hamesha" in a grant of an allowance from a proprietor is "not inconsistent with restriction of the interest to the life of the grantee but the circumstances under which the instrument is made or the subsequent conduct of the parties may show the intention with sufficient certainty to enable the Courts to presume that the grant was perpetual—*per Sir Richard Couch in Aziz-un-nisa v. Tasaddug Husain Khan I. L. R. 23 All. at p. 330 P. C.*

Hamlet.—Hamlet is "in common acceptance used for a vill" *per Kenyon C. J. in King v. Morris, 4 T. R. 552. quoted in S. J. D.*

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Haq Haquq zemindari apna.—See *Pem Singh v. Pertap Singh*, *I. L. R.* 14 *All.* at p. 183.

Hagiat—The word “*hagiat*” means rights and interests in the legal sense of the phrase, *Sheo Ratan Kuar v. Mahipal Kuar I. L. R.* 7 *All.* 258.

“The word ‘*hagiat*’ is derived from the word ‘*haq*’ which means right in a general sense. But the term *hagiat*, though primarily having a wide signification, is now confined to mean landed estates, such as zemindari or muafidari tenures in these Provinces. In this signification it includes all the rights and interests possessed in landed estates by a proprietor in virtue of his proprietorship. The *hagiat* of the proprietor of a whole village is the village itself together with all the rights which he has therein. The *hagiat* of the owner of a part of the village is the share which he possesses in the village, together with all the rights which belong to him by virtue of being a co-sharer in the village. Thus the term *hagiat* includes the rights of a zemindar in the cultivated area, the waste land, the pasture grounds the tanks, the jungles as well as the village site or *abadi* land on which houses whether occupied by himself or by the ryots are situate”—per Mahmood J. in *Ishri v. Thakhar Din*, *A. W. N.* 1882 p. 192 at p. 194 *F. B.* Straight, Brodhurst and Tyrrel JJ. (Stewart C J. concurring) however held that share (*hagiat*) of the Khewat referred to the cultivated area only—*ibid* at p. 193. Followed by Knox and Blair JJ. in *Jadunath Rai v. Mahadeo Prasad Singh*, *A. W. N.* 1896 p. 99.

Harbour.—Harbours “are places to shelter ships from the violence of the sea and where ships are brought for commercial purposes to load and unload goods (and passengers) and quays are a necessary part of them”—per Lord Esher *M. R.* in *R. v. Harnam* 1886, 2 *Times Rep.* 234.

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Defined, 57—8. V. C. 60 S. 742; *Act* 45, 1860 S. 216 B.; *Act* 3, 1894 S. 8 *Mad. Act* 2, 1886 S. 3. (3).

Hard or unconscionable bargain.—See *Ch unni Kuar v. Rup Singh*, I. L. R. 11 All. 57.

Has done substantial Acts—As used in S. 22 Specific Relief Act (1 of 1877), see *Shib Lal v. The Collector of Bareilly*, I. L. R. 16 All. 423.

Hat.—"Hat" is a benefit arising out of land and is therefore within the definition of "immovable property," as given in S. 2 Clause 5 of the General Clauses Act (1 of 1868.) *Surendra Narain Singh v. Bhai Lal Thakur*, I. L. R. 22 Cal. 752.

Have issue.—"In devises the term 'have' in such phrases as 'have issue' 'the lands which I have' means have at the date of the testator's death"—*E. L. E.*

See *Gurusami Pillai v. Sivakami Ammal*, I. L. R. 18 *Mad.* 347; S. C. 22 I. A. at p 128.; *Damodar Das Tapi Das v. Dayabhai Tapi Das*, I. L. R. 21 *Bom.* at p. 22.

He.—Defined *Act* 45, 1860, S. 8. As used in the passage "after perusing the record and hearing applicant or his pleader if he appears" in S. 423 of the Criminal Procedure Code, (*Act* 10, 1882) refers to the pleader and must not be read as either of them'—*per* Mahmood J. dissenting from the contrary view taken *Edge C. J.*, Straight and Young, JJ. in *Queen Empress v. Pohpi and others*, I. L. R. 13 All. 171.

Head of the office.—The expression "head of the office" as used in S. 28 of the *Court Fees Act* (7 of 1870) does not refer to the head of the office of a Court or at all events to the head of the office of a High Court acting not as such but as a taxing officer but it refers to the head of a public office such as the Board of

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Revenue—*Balkaran Rai v. Gobind Nath Tiwari*, I. L. R. 12 All. 129.

Head of a family.—Defined *Bom. Act 3 1874*, S. 4.

Head of the village.—Defined *Mad. Regulation 4, 1816*, S. 3.

Headman.—"The 'headman' [of a village in former times] bore various titles in different parts of the country. In Bengal he was known by the name of *Mukuddum* or *Mundul*, at least in Muhammadan times and seems to have corresponded with the *gram adhiput* or Superintendent of a village referred to in *Manu*; other names were *Gond* or *Ganda*, *Potail* and *Purdhan*. He was a partly elective, partly hereditary officer; and combined the functions of head of the Municipality with those of an officer and representative of the Government. He was supposed to derive his descent from the founder of the village.the State had probably always had a veto upon his appointment, since he was an officer of the State, as well as the representative of the village, and the State could dismiss him at pleasure."

His most important functions...were those of adjuster of the revenue on the village and of collector of the revenue. He arranged all the details of the assessment; ascertained the extent of each holding in the village; estimated the growing crop, and saw the threshed corn heaps weighed, and apportioned the revenue accordingly either by estimate or by the actual out-turn. He also received the share which represented the revenue and delivered it in kind to the superior revenue Collector; or at a later period to the *malguzar* or contractor for the revenue."—*See Phillips Land Tenures of Lower Bengal* pp. 26-28 (T. L. L. 1874-75).

Defined, *Regn. 1, 1895*, S. 2 (4); *Regulation 5, 1896*, S. 2 (6.)

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Health Officer.—Defined, *Bengal Act 4, 1871, S. 1, Mad. Act 1, 1884, S. 3 (j) Mad. Act 2, 1892, S. 3.*

Hear.—"Unless there be something which by natural intendment, or otherwise, would cut down the meaning I apprehend there can be no doubt that the Legislature, when they direct a particular cause to be heard in a particular Court mean, that it is to be heard and finally disposed of there. And further when they say that it is to be heard [meaning heard and finally disposed of]—in a particular Court, they mean unless there is something in the context, which either by natural interpretation or by necessary implication would cut it down, that in all matters which are not provided for that Court is to follow its ordinary procedure"—per Lord Blackburn in *Re Green*, 51 L. J. Q. B. at p. 44.

Heard and finally decided.—The expression "heard and finally decided" as used in S. 13, Civil Procedure Code "means that a former Judgment proceeding wholly on a technical defect or regularity and not upon the merits is not a bar to a subsequent suit for the same cause of action"—per Mahmood J. in *Muhammad Salim v. Nabian Bibi*, I. L. R. 8 All. 282.

Heirs—Defined, Act 27, 1866, S. 2; Act, 1, 1869, S. 2; Act 24, 1870 S. 2; Act 21, 1881, S. 3; Act 22, 1886, S. 4S (2).

As used in S. 7 *Madras Regulation 29 of 1802* means persons who in the event of death would inherit from the preceding incumbent.—*Annugam Pillai v. Vijayammal*, I. L. R. 4 Mad. 338; *Seetaramayya v. Venktarazu*, I. L. R. 18 Mad. 420 at p. 421.

Held.—The expression "*held* by him as *Sir*, in S. 7 of Act 12 of 1881 (*N. W. P. Rent*) "must be construed to mean land belonging to him or to which he was entitled as *Sir*, and as literal interpretation should be placed upon these words as is consistent with the canons of construction—per *Straight Offg. C. J.* In

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Harjas v. Radha Kishen, *I. L. R.* 8 *All.* at p. 258.

Hemp.—Defined. *Act* 12, 1896, S. 3 (k).

Hereditary interest.—The expression “hereditary interest” means an “interest acquired by inheritance” as distinguished from an interest acquired by purchase, gift or other mode of acquisition—*Chinava v. Bhimanganda*, *I. L. R.* 21, *Bom.* at p. 793 [Farran C. J. and Parsons J.]

Hereditary office.—Defined, *Bom. Act* 3, 1874, S. 4; See *Yasu v. Sita Ram*, *I. L. R.* 21, *Bom.* at p. 737 *Chinava v. Bhimanganda*, *I. L. R.* 21, *Bom.* 787.

Hereditary tenure.—Defined, *Beng. Reg.* 37, 1793, S. 15.

Herein.—As used in S. 3 of *Act* 10 of 1877 (*Civil Procedure*), See *Uda Begam v. Imam-ud-din*, *I. L. R.* 2 *All.* 79.

Heretofore.—See *Lal Singh v. Chet Ram*, *P. R.* 1881, No. 121.

Heritable and transferable property.—Defined, *Bom. Act* 5, 1879 S. 73.

Her Majesty—Defined, 7-8 *V. C.* 12, S. 20; *Act* 10, 1897, S. 3 (23); *Bom. Act* 3, 1886, S. 3 (8) *Mad. Act* 1, 1891, S. 3 (13); *Reg.* 3, 1887, S. 2.

Her Majesty's Military Forces.—Defined, 57-8 *V. C.* 45, S. 4.

Her Majesty's Naval Forces.—Defined, 57-8 *V. C.* 45 S. 4.

Her Majesty's Regular Forces.—Defined, 44-5 *V. C.* 58 S. 150 (8).

High Court.—Defined, 48-9 *V. C.* 25, S. 2; *Act* 17, 1864, S. 1; *Act* 10, 1865, S. 3; *Act* 15, 1865, S. 2; *Act* 21, 1866, S. 3, *Act* 27, 1866, S. 2; *Act* 28, 1866, S. 1; *Act* 4, 1869, S. 3 (1); *Act* 2, 1877, S. 1; *Act* 10, 1882 S. S. 4 (i), 266; *Act* 14, 1882

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S. 6 14; *Act* 5, 1888, S. S. 4 (10) 50 (4); *Act* 11, 1889, S. S. 3 (4); *Act* 14, 1891, S. 3, *Act* 7, 1892, S. 2 (3); *Act* 12, 1893, S. 3 (2); *Act* 10, 1897, S. 3 (24) *Act* 5, 1898, S. 4 (g) N. and O. *Act* 1887, S. 2 (17) *Regn.* 7, 1886, S. 1, of *Sch.*; *Regn.* 5 1893, S. S. 4 (1), 10; *Regn.* 1, 1894, S. 10 (a); *Regn.* 8 1896 *Sch.* clause 1.; As used in S. 8 of the *Legal Practitioners Act* 18 of 1879, See *In the matter of the petition of Padma Dut Joshi I. L. R.* 24 *All.* p. 348.

Highness.—"A title of honour given to princes and certain other persons of high rank. In this country (England) it belongs exclusively to members of the Royal Family. Prior to the reign of Henry VIII the Sovereign himself was called Highness, but that monarch adopted the title of *Majesty*, which has been used by English Sovereigns ever since. The title Highness is however, used by some princes exercising Sovereign powers, as for example, the Khedive of Egypt."—*E. L. E.*

High-water mark.—Defined, *Act* 11, 1853, S. 8; *Act* 15, 1879, S. 2; *Act* 10, 1889, S. 4 (4); *Ben. Act* 4, 1887, S. 2; *Bom. Act* 5, 1879, S. 37 *Explanation*; *Bom. Act* 6, 1886, S. 2 (2); *Bom. Act* 5, 1888, S. 2 (b).

Highway.—"A highway is a way along which the public generally has a right to pass. If the public has a right to pass on foot only, the way is a public *Footpath*; if the public has a right to ride or lead a horse along the way it is a *Bridlepath*; if the public has a right to drive cattle along the way, it is a *Driftway*, if the public has a right to drive in carts or carriages along the way it is a *High Road*"—*E. L. E.* See *Public Highway.*"

Hill tract.—Defined, *Reg.* 1, 1895, S. 2 (1).

Hill tribe.—Defined, *Regn.* 1 1895, S. 2 (2).

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Hindu.—"The term 'Hindus' as used in S. 331 of the *Indian Succession Act* (10 of 1865) is denomination not of a race but of a religion. There is no *race* of Hindus. It is not the inhabitants of Hindustan who are Hindus, but those only of them who profess a religion which is called Hindu religion. Just so there is no race of Muhammadans or of Budhists or of Christians—Per Parsons J, in *Degree v. Pacotti San Jao*, I, L. R. 19 Bom. at pp. 787, 788, means and includes a Jain.—*Bachchi v. Makhan Lal*, I. L. R. 3 All. 55; as used in the *Hindu Wills Act* (21 of 1870) S. 2, see *In re Haji Ismail Haji Abdulla*, I. L. R. 6 Bom. 452.

His Majesty's Regular Forces.—Defined, Act 2, 1906, S. 2 (b).

Hissadar deh.—The word 'hissadar' taken by itself and without reference to any context is ambiguous. Whether the words 'hissadar deh' means a co-sharer of a mahal in the sense in which that word is used in the *Land Revenue Act* or merely the 'holder of a share' depends upon the context of the document in which it is used"—per Strachey C. J. in *Dalganjan Singh v. Kallu Singh*, I. L. R. 22 All. p. 1.

Hissadar ekjaddi.—See *Sheobalak Singh v. Lachmi Dhar* I. L. R. 23 All. 427.

Hissadar karibi.—With reference to the context of a *wajibularz* it was held by Mr. Justice Banerji that the words *hissadar karibi* did not refer to *nearness in blood* but to *nearness as regards the holding of share in the village*—*Balzor Rai v. Madho Rai and others* A. W. N. 1895 at p. 79; per Mahmood J. *Mahadeo Prasad v. Sahiba Bibi*, A. W. N. 1887; p. 260.

Hissadar Shikmi.—The expression "*hissadar shikmi*" as used in the clauses of a *wajibularz* dealing with various classes of persons who were entitled to preemption in preference to stran-

gers, does not necessarily imply any idea of subordination, but is applicable to persons who are co-sharers in the particular *khata* of the *patti* in which the land sold was situated—*per Strachey C. J. and Banerji J. in Abdul Shakur v. Mendai, I. L. R., 23 All. 260.*

History ticket.—Defined, *Act 9, 1894, S. 3 (b)*

Hold.—Defined, *Act 27, 1866, S. 2.* See *Bombay Burmah Trading Corporation v. Fredrick York Smith, I. L. R. 19 Bom. p. 1.*

Hold land, to.—Defined *Bom. Act 5, 1879, S. 3 (10).*

Holder.—Defined, *Act 26, 1881 S. 8; Act 9 1886, S. 2 (1) Bom. Act 2, 1863 S. 16 (f.) Bom. Act 7 1863, S. 32 (f.) Bom. Act 3, 1874, S. 15, (4). Bom. Act 5, 1879, S. 3 (11).*

The words "being holder of a license" in S. 56. Madras Abkari Act (1 of 1886) must be taken to include any person in the employ or for the time being acting on behalf of the holder of a license—*Queen Empress v. Mahabiyar Servai I. L. R. 12 Mad. 63*; as used in Act 6 of 1876 (*Chota Nagpur Encumbrance Estate*) see *Koka Mahton v. Mandi Jagarnath Sahai, I. L. R. 27 Cal. at p. 467*; See *Gopika Bai v. Lakhsman, I. L. R. 24 Bom. 538,*

Holder in due course.—Defined, *Act 23, 1881, S. 1.*

Holder of an Estate or tenure.—Defined, *Ben. Act 8, 1880 S. 4. Ben. Act 8, 1895, S. 2 (c).*

Holder of land—Defined *Act 6, 1890 S. 3.*

Holding—Defined, *Act 27, 1866, S. 2 Act 19, 1883, S. 3 (7), Act 8, 1885, S. 3 (g); Act 22, 1886, S. 37, Explanation 1, Act 16 1888, S. 4 (g); Act 17, 1887, S. 3 (3), Bom. Act 5, 1876 S. (4) Ben. Act 9, 1880 S. 4, Ben. Act 8, 1884, S. 6 (8). Bom.*

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Act 5 1878, SS. 9 (12), 47, 64. As used in the Punjab Tenancy Act of 1887 see Ganju v. Asad P. R. 1882 No. 70.

Holding of the raiyat.—Defined, *Act 10 1858 S. 6; Ben. Act 1, 1878, S. 6.*

Holiday—See "Public holiday."

Homage.—See "Allegiance"

Home-stead.—The word "homestead" "conveys the idea of a mansion of the more homely kind, or of a farmstead with their contiguous buildings and curtilage and when used in connection with a Hindu residence in a village it includes the site of the building, the dwelling house, the trees, wells and shrine and all the appendages which together constitute the usual surroundings of the ordinary Hindu village home"—per Farran C. J. in *The Collector of Broach v. Venilal Keshav Bhai I. L. R. 21, Bom. at pp. 593 and 594.*

"Day with its burden and heat had
departed and twilight descending,
Brought back the evening star to the
sky, and the herds to the homestead,"

Longfellow.

Home trade passenger ship—Defined, 57—8. *V. C. 60 S. 742.*

Home trade ship.—Defined 57 8. *V. C. 60. 742. Act 1, 1859 S. 118 (Am Act 6, 1881, S. 5),*

Homicide.—See 'culpable homicide,' "culpable homicide not amounting to murder."

Honesty.—"The terms applicable to human conduct such as 'honesty', for instance, or 'good faith' or 'malice' or 'danger,' 'reasonable apprehension' 'cruelty' cannot be defined. Such rudimentary terms elude a precise definition; they can be illustrated but

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not defined; they must be applied to the circumstances of each case by the Judge and controlled, if erring in principle, by the Court above"—per Lord Hobhouse in *Russel v. Russel*, *L. R.* [1897] *H. L.* at p. 435.

Honorary Assistant Commissioner—Defined *Act* 13, 1879,, S. 15.

Honorary Magistrate—Defined *Act* 15, 1883, S 2; *Reg.* 5, 1886, S. 2 (3).

Honorary Munsif—Defined *N. and O. Act* 2, 1896, S. 3 (1).

Honourable.—"A titilur prefix to the names of certain persons, who assume it either by courtesy, according to custom, or by Royal warrant of precedency, or in virtue of some office..... Honourables of the second class are the Judges of the High Court; County Court Judges, maids of honour, and members of Executive and Legislative Councils of the colonies with responsible Góvernment—*E. L. E.*

Horse.—Defined 44 5 V. C. 58, S. 190 (40); *Act* 16. 1861 S. 21 (am *Act* 16, 1876). *Act* 20, 1899 S. 2; *Act* 2, 1901 S. 2 (c); *Ben. Act* 8, 1880 S. 2; *Ben. Act* 2, 1891 S. 3 (3); *Mad. Act* 3 1879, S. 3; *Mad. Act* 1, 1884 S. 3 (8). *Mad. Act* 4, 1884 S. 3 (XV). *Act* 2, 1901, S. 2(c)

The word 'horse' as used in the *Madras Town Improvement Act* 1871 includes a pony—*Vizgapatam Municipality v. G. L. Walker I. L. R.* 5 *Mad.* 209.

Hospital.—"Originally no doubt 'hospital' was a word of very wide signification.....In modern times however the signification of the word has been greatly narrowed and it has acquired specially a meannig of the place for the treatment of the sick and infirm—per Bruce J. in *Moses v. Marshand.* [1901]. 1 *Q. B.* at p. 671.

Hospital Port dues.—Defined *Act 10, 1889 S. 49 (2)*.

Hotel, tavern, shop or place.—As used in cl. 2 of S. 11 of *Police Act 48 of 1860* are wide enough to include every place mentioned in the first clause of that section—*Queen Empress v. Sheriar Ardeseer Erane I. L. R. 15 Bom. 530*.

Hotchpot.—By what Blackstone calls 'a housewifery mataphor, the term is used in law to signify the mangling of property in certain cases, in which a person claiming to share in a common fund is bound, as a condition of so doing, to bring into the fund other property deemed in law to have been previously advanced to him in anticipation of his final share in the fund. Hotchpot implies in principle, and is probably related in origin, to the *Collatio Bonorum* of Roman Law—*E. L. R.*

House.—Defined *Act 20, 1856 S. 6 (1) Act 2, 1880 S. 6. Act 19 1884, S. 2 (4) Ben. Act 5, 1876 S. 6 (5) Ben Act 3, 1884 S. (4) Ben. Act 2, 1888. S. 3. Mad. Act 5, 1884 S. 3 (XII); N. and O. 1 Act 1881 S. 2 (d.) Reg. 1. 1883 S. 2; Act 8, 1901, S. 3 (d); Act 2, 1902, S. 2 (d.)*

"The word 'house' in the maxim 'every man's house is his castle' means *dwelling house* and does not include other buildings such as barn or outhouses not connected with a dwelling house which may be broken open in order to levy an execution—*per Lord Esher M. R. in Hodder v. Williams, [1895] 2 Q. B. at p. 666 C. A.*

As used in clause (c) of S. 266 of the *Code of Civil Procedure* refers to the house in which an agriculturist dwells or in which his representatives dwell after his death and to no other—*per West and Nanabhai Hari Das JJ. in Radha Kishun v. Balwant, I. L. R. 7 Bom. 530; Jivun Bhaga v. Hira I. L. R. 12 Bom. 363.*

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House-breaking.—Defined, *Act 45, 1860, S. 445.*

House-breaking by night.—Defined, *Act 45, 1860, S. 446.*

House-drain.—Defined, *Act 3 1898, S. 3 (20); Act 3, 1899, S. 3 (21);*

House-gully.—Defined *Bom. Act 3, 1888, S. 3 (v)*

House-hold.—Servant or labourer. As used in *Art. 7, Sch. II Limitation Act 15* of 1877 does not include a person whose duties are to sweep and clean a temple, provide flowers for daily worship and garlands for the idol—*Bhavathradan v. Rama I. L. R. 7 Mad. 99.*

House of Commons.—"The House of Commons consists of 670 Members of whom 495 are returned by England and Wales, 72 by Scotland, 103 by Ireland."—*E. L. E.*

House of Lords.—"The House of Lords, as at present existing is composed of Members who sit in virtue of various qualifications, some because a remote ancestor was summoned to Parliament by the Sovereign and sat in obedience to the summons, others by reason of Letters Patent to themselves or to one of their ancestors, others again by force of particular Statutes"—*E. L. E.*

House productive of rent.—Defined, *Act 20 1891, S. 62 (5).*

House-trespass.—Defined *Act 45, 1869, S. 442.*

Huri grants.—See *Baden Powells Land System of British India Vol. III p. 336.*

Hurt.—Defined *Act 45, 1860, S. 3 19.*

Husband.—Defined, *Act 15, 1865, S. 2.*

Hut.—Defined, *Act 3, 1899, S. 3; (22); Ben. Act 2, 1888 S. 3 Ben. Act 1, 1898. S. 3 (1.)* "But it appears to me to be impossible to say that common hut whether its walls be of mud or of mat is not

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for ordinary purposes a house: and we are not justified in introducing modifications and limitations into the definition given in Act 8 of 1859 when there is nothing to lead to the conclusion that the Legislature intended that the word house should be read in any other than its widest sense"—*per* Macpherson J in *Natoo Meah v. Nand Ranee*, 17, W. R. at p. 312.

Huzoori Malgoozar.—See "Malgoozar."

Hypothecated.—Defined, Act 10, 1859, S. 112.

Identification.—"Proof in a legal proceeding that a person, document or other thing is that which it is alleged to be"—*E. L. E.*

Idiot.—An *idiot*, in the words of Lord Coke, is one 'who from his nativity, by a perpetual infirmity is *non compos mentis*.' "Persons who are both deaf and dumb are in law presumed to be idiots"—*E. L. E.* "A man without any glimmering of reasons" *Blackstone. Idiots madmen or lunatics.*—These words as used in Hindu Law "do not contemplate persons merely of weak intellect in the sense that they are not up to the ordinary standard of human intelligence or endued with the business capacity to manage their affairs properly.—*per* Straight and Mahmood JJ. in *Surti v. Narain Das* I. L. R. 12 All. at p. 583.

Illegal.—Defined Act 45. 1860, S. 43.

Illegally.—As used in S. 622 of the *Code of Civil Procedure* see *Badami Kuar v. Dinu Rai* I. L. R. 8 All. p. 111. See "Material irregularity".

Illegal omission.—Defined *Mad. Act* 1, 1891, S. 2 (66).

Imagining.—See "Compassing"

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Immediately—"It is impossible to lay down any hard and fast rule as to what is the meaning of the word 'immediately' in all cases. The words 'forthwith' and 'immediately' have the same meaning. They are stronger than the expression 'within a reasonable time' and imply prompt vigorous action, without any delay and whether there has been such action is a question of fact having regard to the circumstances of the particular case"—per Chockburn C. J. in *The Queen v. Justices of Berkshire*, 4 Q. B. D. at p. 471. "When a Statute requires that something shall be done 'forthwith,' or even 'immediately' it would probably be understood as allowing a reasonable time for doing it—*Maxwell on Statutes* p. 423 [2nd edition] quoted with approval in *In re the application of Sheshamma*, I. L. R. 12 Bom. at p. 277. "The word 'immediately' although in strictness it excludes all meantimes yet to make good the deeds and intents of parties it shall be construed such convenient time as is reasonably requisite for doing the thing—*Pybus v. Mitford*, 2 Lev 77 quoted in *S. J. D.*; it means within a reasonable time—per Collins C. J. and Wilkinson J. in *Queen Empress v. Jammu*, I. L. R. 12 Mad. at p. 451; See also *Shand & Co. v. Atmakuri Adr Narayana Chhetti* 2 Mad. H. C. R. at p. 194 and *In re the application of Sheshamma*, I. L. R. 12 Bom. at p. 277.

Immorality.—Attending nautches and occasionally giving nautches at one's own expense cannot be considered *immorality* so as to absolve a Hindu son from discharging his father's debts—per Kemp and Pontifex JJ. in *Budree Lal v. Kantu Lal*, 23 W. R. p. 260.

Immoveable property—Defined, *Act 10, 1865*; S. 3; *Act 27, 1866*—S. 2; *Act 28, 1866*, S. 1, *Act 3 1877*, S. 3, *Act 4, 1882*, S. 3 *Act 10, 1892*, S. 2 (1); *Act 10, 1887*, S. 3 (25); *Beng. Act 5, 1876*, S. 5 (5); *Beng. Act 3, 1890* S. 4 *Beng. Act 3, 1894*, S. 6 (5) *Bom. Act 6 1878*, S. 3, (11); *Bom. Act 3, 1886*, S. 3, (16);

Mad. Act 1, 1891, S(14); N. and O. Act 1, 1887, S. 2 (18); N. and O. Act 3, 1892, S. 2 (6); Reg. 1, 1887, S. 2.

"Putting a general construction upon the term ('immoveable property') it is not identical with 'lands or houses.' The word 'immoveable' is used as something less technical than 'real.' The term includes certainly all that would be 'real' property according to English Law and possibly more"—*per* Sir J. Colville in *Maharana Fateh Singhji Jaswant Singhji v. Deosai Kallian raiji Hekoomut raiji*, 21 *W. R. at p 181, S. C. 13 B. L. R. 254 (P. C.)*; as used in S. 58 of the Transfer of Property Act denote not only the property itself but include the equity of redemption in such property—*per* Ghose and Garden JJ in *Kanti Ram v. Kuttub-uddin Mahomed*, *I. L. R. 22 Cal. 33*; but see *Mata Din Kasodhan v. Kasim Husain*, *I. L. R. 13 All. 432 F. B.*

Hat.—A hat the possession of which is held by collecting tolls or rents is not an "immoveable property" within the meaning of S. 9 of the Special Relief Act (1 of 1877)—See *Fazlur Rahman v. Krishna Prasad*, *I. L. R. 29 Cal. 614.*

Jalkar—is "immoveable property" within the meaning of S. 106 of the *Transfer of Property Act* (4 of 1882)—*Ramgopal Bysack v. Nurruddin*, *I. L. R. 20 Cal. 446.*

Right to fish—A right to fish in a Khal, the soil of which does not belong to the person seeking to enforce such right is not 'immoveable property' within the meaning of S. 9 of *Specific Relief Act* (1 of 1877)—*per* Petheram C. J., O'Kinealy and Ghose JJ. (Prinsep and Pigot JJ. dissenting) in *Fadu Jhala v. Gour Mohan Jhala*, *I. L. R. 19 Cal. p 544.*

Tree.—"The tree so standing is 'immoveable property' whatever the plaintiff's intention might be as to cutting it down and so converting it into moveable property"—*per* Sargent C. J. in

Sakha Ram Mulshet Mhadik v. Vishram, I. L. R. 19 Bom. 207. See "Timber." *Standing crops* are immoveable property in the sense of the *General Clauses Act* (1 of 1868)—*per* Edge C. J. and Tyrrell J. in *Cheda Lal v. Mul Chand*, A. W. N, 1891 at p. 175; *Madaya v. Yenkata*, I. L. R. 11 Mad. 193.

Water—"I am inclined to think that water as long as it is flowing in the bed of a stream or river is attached to the earth and is therefore "immoveable property." Though it can be made into moveable property by severance or removal from the earth"—*per* Stogdon J in *Alam Sher v. Ram Chand and others* P. R., 1898 No. 11.

For the distinction between "*specific* immoveable property", and "ordinary immoveable property" see the observations of O'Kinealy J. in *Fadu Jhala v. Gour Mohan Jhala*, at p. 566, *Supra*.

Imperfect partition.—Defined *Act* 3, 1901, S. 106, *Act* 17, 1876 S. 68 *Act* 18, 1881, S. 136 (3); *Act* 16, 1889, S. 26; *Regn.* 1, 1886, S. 96.

Imperfect pattidari—See "*Pattidari*."

Implied authority—Defined, *Act* 9, 1872, S. 187.

Implied covenant—"The term [*implied covenant*] is often used in a twofold sense; first as denoting a covenant which is to be gathered from the four corners of the instrument or from words or phrases not generally used in law to express a covenant and in this sense an implied covenant is for all legal purposes the same as an express covenant; but secondly, it is also used to denote a covenant in law that is a covenant attached by the law—apart from any express intention of the parties—by reason of the use of some particular words, for example 'demise'; or by reason of a particular relation, for example that of a landlord

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and tenant"—per Lord Russel in *Baynes and Co. v. Llyod and Sons*, [1895] 1 Q. B. at pp. 823, 824 C. A.

Implied promise—Defined *Act* 9, 1872, S. 9.

Implied release—Defined *Act* 5, 1882, S. 38, *Explanation*.

Import—Defined, *Act* 8; 1899 S. 2 (c); *Act* 1, 1878, S. 3; *Act* 4, 1884, S. 4 (6) *Act* 12, 1886, S. 3 (3); *Act* 12, 1886, S. 3 (e); *Bom.* *Act* 5, 1878, S. 3 (10) *Bom.* *Act* 1, 1886, S. 3 (15); *Act* 8 of 1899, S. 2 (c).

Importation—Defined, *Act* 11, 1878, S. 6 *Explanation*; *Act* 12, 1886, S. 3 (3).

Imported—Goods are *imported* as soon as they pass within the limits of the Municipality, that is, brought within the limits from a place without its boundaries—See *In re Rahima Bhanji*, I. L. R. 22 *Bom.* 841.

Impressed Stamp—Defined, *Act* 2, 1899, S. 2, *sub-sec.* (13).

Imprisonment—Defined, *Act* 10, 1897, S. 3 (26); *N. & O. Act* 1, 1887, S. 2 (20); *Mad. Act* 1, 1880, S. 1, *Mad. Act* 5, 1882, S. 2; *Mad. Act* 1, 1886, S. 3 (6); *Mad. Act* 3, 1888, S. 3; *Mad. Act* 4, 1881, S. 3; *Mad. Act* 1, 1891, S. 3 (15); *Bom.* *Act* 3, 1886, S. 3 (14).

As used in S. 395 of the *Criminal Procedure Code* "means a substantive sentence of imprisonment and does not mean an imprisonment for default in payment of a fine"—per Straight J in *Queen Empress v. Sheodin* I. L. R. 11. All. p. 308.

"Some confusion seems to me to arise from confounding imprisonment of the body with mere loss of freedom: it is one part of the definition of freedom to be able to go whithersoever one pleases; but imprisonment is something more than the mere loss of this power; it includes the notion of restraint within

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some limits defined by a will or power exterior to our own—*per* Coleridge J in *Bird v. Jones*, 7 Q. B. 742; it is “an entire restraint”—*per* Williams J *Ibi*. “imprisonment is as I apprehend, a total restraint of the liberty of the person for however a short time and not a partial obstruction of his will, whatever inconvenience it may bring on him”—*per* Patteson J. *Ibi*; “Nothing short of actual detention and complete loss of freedom will support an action for false imprisonment”—*per* Lord Macnaughten in delivering the Judgment of their Lordships of the Privy Council in *Syed Muhammad Yusufuddin v. Secretary of State for India in Council* L. R. 30 I. A. at p 158 [1903.]

Improper—‘Improper’ really means ‘wrongful’—that is otherwise than by inevitable accident”—*per* Brett M. R., *The Warkworth* 53 L. J. P. D. and a 66.

Improved Land—Defined, *Beng. Act* 6, 1880, S. 3.

Improvement—Defined, *Act* 9, 1898, S. 2 (4); *Act* 16, 1887, S. 4 (19); *Act* 22, 1886, S. 26; *Act* 8, 1885, S. 26; *Act* 19, 1883, S. 4 (2); *Act* 9, 1883, S. 3 (8); *Mad. Act* 1, 1887, S. 3.

In accordance with law—The expression “in accordance with law” as used in art 179 of the Limitation Act (15 of 1887) means in accordance with law relating to execution of decrees—See *Balkeshen Das v. Bedmati Kuar*, I. L. R. 20 Cal 388; is adjectival not only to the words “to the proper court” but also to the words “to take some step in execution”—See *Bhagwan Jathi Ram v. Bhondi*, I. L. R. 22 Bom. 83—See “Applying in accordance with law”

Inalienable—“Even if there were no authority to the effect that the word ‘inalienable’ amounts to a restraint on anticipation I should be prepared so to hold, but there is ample authority”—*per* Bowen L. J. in *Harrison v. Harrison*, 58 L. J. P. D. A. 32.

In all other cases—See *Liladhar Vias v. Official Assignee of Madras*, *I. L. R.* 24 *Mad.* 160.

In an original suit—See *Venkapa Naik v. Bashingapa*, *I. L. R.* 12 *Bom.* at p 415.

Incapable—The word “incapable” as used in the expression “incapable of giving evidence” in S. 32 of the Evidence Act (1 of 1872) “denotes an incapacity of a permanent kind”—*per* Norris and White *JJ.* In *the Matter of Pyare Lal*, 4 *C. L. R.* 504; “something short of permanent incapacity might satisfy the words of this Section, ‘incapable of giving evidence,’”—*per* Pontifex and Field *JJ.* in *In re Assur Husain*, 7 *C. L. R.* at p. 125.

Incestuous adultery.—Defined, *Act 4*, 1869, S. 3 (6).

Includes.—‘The word ‘includes’ has an extending force and does not limit the meaning of the term to the substance of the definition—*per* Field J. in *Nasiban v. Preosunker Ghose*, *I. L. R.* 8 *Cal.* at p 536; when it is used in the interpretation clauses it is intended to be enumerative & not exhaustive. When it is intended to exhaust the signification of the word interpreted the word “mean” is used. See *Balvantrav T. Bapuji v. Purshotam Sidheshwar*, 9 *Bom. H. C. Rep.* p 99 at p 106; as used in *Cl. 13* and other clauses of S. 1 of *Act 1* of 1868 is intended to be enumerative, not exhaustive.—*The Empress v. Ramanjiyya*, *I. L. R.* 2 *Mad.* 5.

Income—“‘Income’ is a general expression signifying what comes in”—*per* Selbourne *L. C.* in *Jones v. Ogle*, 42 *L. J. Ch.* 336; “is as large a word as can be used”—*per* Jessel *M. R.* in *Re Huggins* 51 *L. J. Ch.* at p 938 See *Chengama Nayadu v. Munisami Nayadu*, *I. L. R.* 20 *Mad.* at p. 77—Defined, *Act 2*, 1886, S. 3 (5).

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Increase of rent to which he may be justly liable.—See *Chooramony Dey v. Howrah Mills Co.*, *I. L. R.* 11 *Cal.* 696.

Increment to island—Defined, *Beng. Act* 4, 1808 *S.* 2.

Incumbrance.—Exchange of land is an incumbrance within the meaning of *S.* 161 of the *Bengal Tenancy Act* 8 of 1885—*Chundia Sakai v. Kalli Prasanno Chuckerbutty*, *I. L. R.* 23 *Cal.* 254; as used in *art* 121 of the *Limitation Act* (15 of 1877) see *Nuffar Chandru Pal Chaudhri v. Rajendra Lal Goswami*, *I. L. R.* 25 *Cal.* 167. See *Karmi Khan v. Brajo Nath Das*, *I. L. R.* 22 *Cal.* at p. 251; *Shib Das BandoPadhya v. Baman Das Mukopadhya*, 8 *B. L. R.* 237. Defined, *Act* 17, 1887, *S.* 3 (16); *Act* 8, 1885, *S.* 161 (a); *Act* 17, 1876, *S.* 2, *Bom. Act* 6, 1888 *S.* 2 (1) (e).

Incumbrancer.—Defined, *Bom. Act* 6, 1888, *S.* 2 (1) (e.)

Indemnity—See “Contract of indemnity.”

Independent Deputy Collector.—Defined *Act* 6, 1853 *S.* 5.

Independent Taluk.—Defined *Beng. Regn.* 19, 1793 *S.* 7.

India.—Defined, *Act* 10, 1897 *S.* 3. (2); *Act* 12, 1894, *S.* 4 (15); *Act* 20, 1863, *S.* 24; *Act* 1, 1859 *S.* 118; 44-5 *V. C.* 58 *S.* 190 (21) 47-48 *V. C.* 31 *S.* 18; 52-3 *V. C.* 63 *S.* 18 (5); 53 *V. C.* 4 *S.* 9 (1); *Mad. Act* 5, 1866, *S.* 1. See “British India”.

India stock—Defined, 48-9 *V. C.* 25 *S.* 2.

Indian Legislature.—The first Act which directly provided for the form of Government in India is the 13 *Geo. III, Cap.* 63 (passed in 1773) known as the *Regulating Act*. The second stage is marked by the passing of the 3 and 4 *Will. IV. Cap.* 85 which brought to a close the era of *Regulations*. The third stage is nothing more than a development of 3 and 4 *Will. IV*

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Cap. 85. The first important change was made by the *Act of 1853* (16 and 17 V. C. 15). In 1861 was passed the 24 and 25 V. C. 67, the "*Indian Council's Act*" which is the law under which our present Legislature subsists,

Indian Marine Court.—Defined, *Act 14, 1887, S. 2 (1).*

Indian Railway Company.—Defined, 48-9 V. C. 25 S., 2; 57-8 V. C. 12, S. 2.

Indian Reserve Forces.—Defined, *Act 2, 1901, S. 2 (d).*

Indian Waters.—Defined, 47-8 V. C. 38. S. 3.

In discharge of his duty.—"In our opinion the words 'in discharge of his duty' (as used in the earlier portion of S. 332 *Indian Penal Code*) can have only one meaning and that is that the officer has a duty to discharge and is discharging it at the particular time. They cannot mean that the officer is acting under the colour of his office. He must be acting at the time as a Police officer and in the particular matter discharging a duty incumbent upon him as a Police officer"—*per Edge C., J and Burkitt J. in Queen Empress v. Dalip, I. L R. 18 All. 246 at p. 250.*

Indorsed.—Defined *Act 3, 1877, S. 3.*

"A direction to 'endorse' anything on a document means as a general rule to write it on the back of the document".—*per Hawkins J. in Ackers v. Howard, 55 L. J. Q. B. 278.*

Indorsee —Defined *Act 26, 1881, S. 16.*

Indorsement.—Defined, *Act 3, 1877, S. 3; Act 26, 1881, S. 15.*

Indorsement in blank.—Defined, *Act 26, 1881, S. 1.*

Indorsement in full.—Defined *Act 26, 1881 S. 16.*

Indorser.—Defined, *Act 26, 1881, S. 15.*

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Inferior.—The word “inferior” is used in its ordinary and not a technical sense in S. 435 of the *Code of Criminal Procedure* (Act 10, 1882), See *Opendro Nath Ghose v. Dukhini Bewa*, I. L. R. 12 Cal. at p. 476; it means inferior “so far as regards the particular subject matter” (in respect of which the superior Court is asked to exercise its revisional jurisdiction)—*per* Mc. Donnell and Field J.J. in *Nobin Kristo Mukerji v. Russick Lal Laha* I. L. R. 10 Cal. at p. 272 See also *Q.E. v. Laskari*, I. L. R. 7 All. 853 and the observations of West J in *Q. E. v. Pirya Gopal*, I. L. R. 9 Bom. pp. 102, 103.

Inferior holder.—Defined, *Bom Act 5, 1879 S. 3 (14)*

Inforce.—The words ‘inforce’ in S. 7 of the *Scheduled District Act* of 1874 “clearly mean legally and validly inforce”—*per* White C. J. in *Maharaja of Jeypur v. Papayyamma*, I. L. R. 23 Mad. at p. 348.

Inhabit.—“The word ‘inhabit’ simply means to dwell in”—*per* Cave J in *Atkienson v. Collard*; 55 L. J. Q. B. 23.

Inhabitant.—Defined, *N. W. P. & O. Act 1, 1900, S. 3 (5)*; *Mad. Act 4, 1884 S. 3 (iii)*; *Act 5, 1861, S. 15, Explanation*; *Act 8, 1895 S. 4*; *Act 17, 1884, S. 2*; *Act 20, 1891, S. 3 (3)*; *Regn. 5, 1886 S. 2 (4)*.

Inhabited room.—Defined *Act 3, 1899 S. 3 (23)*.

Inheritor.—“This word may be used in the sense merely of ‘Taker’”—*per* Knight Bruce L.J. in *Boys v. Bradley*, 22 L.J. Ch. 621.

Injunction.—See “Temporary injunction.”

Injure.—“An intent to ‘injure’ in strictness means more than an intent to do harm. It connotes an intent to do wrongful harm”—*per* Bowen L.J. in *Mogul Co. v. Mc Gragor*, 23 Q. B. D. 598.

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Injury.—Defined *Act 45, 1860, S. 44*; it is simply an act which is contrary to law—See *Swami Nayadu v. Suberamaniam Mudali*, 2 *Mad. H. C. R.* at p. 160 (1864-65). See *Jawahir Pataik v. Parbhoo Ahir*, *I. L. R.* 30 *Cal.* 418.

Injury to property.—means “a substantial physical injury to property”—*per* Field J. in *Goodhand v. Ayscough*, 10 *Q. B. D.* 71.

Inland.—Defined *Act 6, 1898 S. 2 (b)*.

Inland instrument.—Defined *Act 26, 1881, S. 11*.

Inland steam vessel.—Defined, *Act 6, 1884, S. 5 (4)*.

Inland water.—Defined, *Act 9, 1890, S. 3 (3)*; *Act 6, 1884, S. 5 (2)* [amended by *Act 3, 1890, S. 1*].

Inn.—“An ‘inn’ is a house the owner of which holds out that he will receive all travellers and sojourners who are willing to pay a price adequate to the sort of accommodation provided”—*per* Kennedy J. in *Orchard v. Bush*, [1898] 2 *Q. B.* p. 288.

Inoculation.—Defined, *Act 13, 1880 S. 2 (5)*; *Mad. Act 4, 1884 S. 3 (xvi)*, *Mad. Act 5 1884 S. 3 (xviii)*.

Inquiry.—Defined *Act 5, 1898 S. 4. (k)*.

As used in S. 437 of the *Code of Criminal Procedure*, includes a trial and the ‘further inquiry’, would therefore allow of the framing of a charge and the cross-examination of witnesses for the prosecution”—*per* Prinsep J. in *Haridas Sanyal v. Santullah*, *I. L. R.* 15 *Cal.* at p. 609 See *Satook Chandra Pande v. Rajendra Narain Bagchi*, *I. L. R.* 22, *Cal.* 898; *Q. E. v. Balasimnatambi*, *I. L. R.* 14 *Mad.* 334; *Q. E. v. Chotu I. L. R.* 9 *All.* 52 (*F. B.*); *Q. E. v. Dorabji Hormosji I. L. R.* 10, *Bom.* 131; *Dhaniah v. E. L. Clifford I. L. R.* 13 *Bom.* 376; *Bhallu Singh v. Q. E., P. R.* 1897 No. 3 (*Crl.*)

In respect of sales in execution of decrees.—See *Sadhu Sarun Singh v. Panchdeo*, *I. L. R.* 14 Cal p. 1.

Insanity.—As for the unsound state of mind in matters of contract see *S. 12* of the *Contract Act* (9 of 1872,) See *Tirumagal v. Rama sami*, *1. M. H. C. R.* 214; *Ram Sahay Bhuku v. Lala Lalji Sahay*, *I. L. R.* 8 Cal. 149.

Insolvency.—See 'Bankruptcy'.

Insolvent.—Defined *Act 9, 1872, S. 96, Explanation. See Act 4, 1872, S. 24.*

Insolvent Circumstances.—"Insolvent circumstances has always been held to mean not merely being behind the world if an account were taken, but insolvency to the extent of being unable to pay just debts in the ordinary course of trade and business"—*per Willes J. in R. v. Saddlers & Co.* 32 *L. J. Q. B.* 345: 10 *H. L. Ca.* 404.

Inspector.—Defined, *Act 6, 1901, S. 2 (i)*; *Act 9, 1890 S. 3 (8)*; *Act 1, 1882, S. 3*; *Act 18, 1882 S. 2; Mad. Act 4, 1889, S. 3 (b).*

Inspector General.—Defined, *Act 8, 1897 S. 4 (b)*; *Act 9 1894, S. 3 (7)*; *Bom. Act 4 1890, S. 3 (a)*

Inspector General of Registration.—Defined, *Beng. Act 1 1876 S. 2.*

Inspector of Police.—Defined, *Beng. Act 8, 1880, S. 2.*

Instance.—As used in *S. 13* of the *Evidence Act* (1 of 1872)—See the observations of *Straight J* in *The Collector of Gorakhpur v. Palakdhari Singh* *I. L. R.* 12 All. at *S. 24.*

Instantly.—See "Immediately".

Instigate.—Defined, *Act 45, 1860, S. 107, Explanation.*

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Instituted.—As used in S. 95 of the *Registration Act* (20 of 1866) means “commenced”—*Q. E. v. Sheo Ghulam Das*, 6 B. L. R. 692.

Institution.—“Means an undertaking formed to promote some defined purpose having in view generally the instruction or education of the public. It is the body called into existence to translate the purpose as conceived in the mind of the founders into a living and active principle. Sometimes the word is used to denote merely the local habitation or the head quarters of the institution. Sometimes it comprehends everything that goes to make up the institution—everything belonging to the undertaking in connection with the purpose which informs and animates the whole—*per* Lord Macnaughton in *Mayer of Manchester v. Mc Adam* [1896] *App. Cas.* 511 and 512.

The words “the institution of proceedings” in S. 211 of the *Indian Penal Code* are not limited to the bringing of a charge before the Magistrate or to action by the Magistrate or Police against the person charged—*per* Collins C. J. and Benson J. in *Q. E. v. Nanjunda Rau*—*I. L. R.* 20 *Mad.* at p. 81. See also the cases cited therein.

Instrument—Defined, *Act 2*, 1899 S. 2 (14); *Act 4*, 1882: S. 3.

“An instrument is a formal legal writing”—*S. J. D.* As used in S. 50 of the *Registration Act* (20, 1866) refers to an honest *bona fide* instrument and does not include a fraudulent one—*per* Sir Barnes Peacock C. J. in *Shaikh Rahmat-Ullah v. Shaikh Sariut-Ullah bagchi* B. L. R. p. 82; S. C. 10 W. R. p. 51; *per* Mark by J. in *Dookhai Meer v. Shaikh Nassir*, 20 W. R. at p. 111; in S. 39 of the *Guardian and Wards Act* (3 of 1840) mean instruments *ejusdem generis* with a will, and the decree of a Civil Court is not an ‘instrument’ within the meaning of

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this section—*per* Sargent C. J. and Telang J. in *Bai Hakor v. Bai Shangar*, *I. L. R.* 18 *Bom.* 375; as used in the *Registration Act* (3 of 1877) see, "Document".

Instrument of Gaming.—Defined *Act* 2, 1857, *S.* 59 amended by *Beng. Act* 3, 1897 *S.* 3; *Act* 16, 1884, *S.* 2 (3); *Beng. Act* 4, 1866, *S.* 3, amended by *Beng. Act* 3 1897, *S.* 2; *Beng. Act* 2 1867, *S.* 1 amended by *Beng. Act* 3, 1897, *S.* 4; *Beng. Act* 4, 1887, amended by *Beng. Act* 1, 1890.

A coin is not an "instrument of gaming" "within the meaning of *S.* 12 of the *Bombay Act* 4 of 1887. The expression "instrument of gaming means an implement devised or intended for the purpose—See *Queen Empress v. Govind and others*, *I. L. R.* 16 *Bom.* 283, (*F. B.*); *cowris* are, however different from coins and may be treated as instruments of "gaming" when they are used as counters or as means to carry on gaming—See the observations of Edge C. J and Knox J. in *Q. E. v. Bala Misra*, *I. L. R.* 19 *Al.* at p. 312 see also *Q. E. v. Makund Ram*, *I. L. R.* 25 *Cal.* 432; as used in the *Bombay Gambling Act* 4 of 1887 see *Q. E. v. Kanji Bhimji*, *I. L. R.* 17 *Bom.* 184.

Instrument of Partition.—Defined, *Act* 2, 1899 *S.* 2 (15.)

Instrument of Trust.—Defined *Act* 2, 1882 *S.* 3.

Insufficient Security.—Defined, *Act* 4, 1882, *S.* 66, *Explanation Act* 5, 1882, *S.* 10 *Explanation*.

Insurance Company.—Defined *Act* 6, 1882 *S.* 3

Intent.—As used in *Insolvent Act* (11 and 12 *V. C.* 21, *S.* 9). See *In re Dhanpat Singh*, *I. L. R.* 20 *Cal.* 771,

Intentionally.—The word "intentionally" seems to have been used in *S.* 115 of the *Evidence Act* (1 of 1872) for the purpose

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of declaring the law as it had been stated to be in judgments in England—See *Surat Chander Dey v. Gopal Chander Laha*, *I. L. R.* 20 *Cal.* 296 *S. C.* 19 *I A.* at p. 219. Section 115 appears to have been suggested by the leading case *Pickard v. Sears* (6 *A. & E.* 469). In *Pickard v. Sears* the Court had used the expression “wilfully” whereas in the Indian Act the term “intentionally” is used. The term “wilfully” was explained in *Freeman v. Corze* [2 *ex* 644] that by the term we must understand if not that the party represents that to be true which he knows to be untrue, at least that he *means* his representation to be acted upon—See *Vishnu v. Krishna*; *I. L. R.* 7 *Mad.* pp. 7 & 8.

Interest—The word “interest” is not necessarily confined to rights of ownership but is sufficiently large to include any minor interest such as that of a tenant or a person having a charge—*per* Shephard and Best *JJ.* in *Paya Matathil Appu v. Kovamel Amina* *I. L. R.* 19 *Mad.* at p. 153; as used in the 5th proviso to S. 3 of the *Hindu Wills Act* (21 of 1870) see *Alangamonjori Debee v. Sonamoni Debee*, *I. L. R.* 8 *Cal.* at p. 640.

Interested—See “Person interested”.

Interest in land—As used in the *District Road Cess Act* (*Ben.* Act 10 of 1871 see *David v. Girish Chander Guha* *I. L. R.* 9 *Cal.* 185.

Intermediate Adjustment of account.—Defined, *Regn.* 3, 1873 *S. 6 Explanation.*

International Law—“The law of nations is a system of rules deducible by natural reason, and established by universal consent among the civilized inhabitants of the world in order to decide all disputes, to regulate all ceremonies and civilities, and to insure the observance of justice and good faith, in that intercourse which must frequently occur between two or more independent

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States, and the individuals belonging to each"—*Blackstone's Commentaries on the laws of England* vol. IV, p 66 (4th edition). "Strictly speaking, International Law is an inexact expression, and it is apt to mislead, if its inexactness is not kept in mind. Law implies a lawgiver and a tribunal capable of enforcing its transgressors; but there is no common lawgiver to Sovereign States, and no tribunal has the power to bind them by decrees or coerce them if they transgress. The law of nations is that collection of usages which civilized States have agreed to observe in their dealings with one another. What these usages are, whether a particular one has or has not been agreed to, must be a matter of evidence. Treatise and Acts of States are but evidence of the agreement of nations on international points and on such points when they arise the English Courts give effect as part of English Law, to such agreement"—*per* Lord Coleridge in *The Queen v. Keyn* 2 Ex. D. 63 at p 153.

Interpretation—"By the interpretation of a document is meant the act of ascertaining what intentions the writer intended to convey to the reader by it, or to use other words what intentions are expressed in it"—*E. L. E.*

Interruption—Defined, *Act 15, 1877, S. 26, Explanation; Act 5 1882; S 15, Explanation.*

As used in *S. 27 of the Limitation Act (9 of 1871)* "means an obstruction or prevention of the user of the easement by some person acting adversely to the person who claims it. The expression is altogether inapplicable to any voluntary discontinuance of the user by the claimant himself"—*per* Garth C. J. in *Sham Churn Addy v. Tariney Charun Banerji*, *I. L. R. 1 Cal.* at p 429.

Intervention—"Intervention" in international law is the interference of one State in the affairs, whether domestic or foreign,

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of another State, or as between other States without the consent for the purpose either of maintaining or altering the condition of things within it"—*E. L. E.*

Intestacy—Defined Act 10, 1865, S. 25.

Intestate—As used in S. 13 (1) of *Oudh Estates Act* 1 of 1869 means intestate as to the Talukadari estate—See *Bhaya Rabidat Singh v. Maharani Inder Kuer*, 16 *I. A.* 53 : *S. C. I. L. R.* 16 *Cal.* 556

In the absence of a contract to the contrary—The words "in the absence of a contract to the contrary" in S. 82 of the *Transfer of Property Act* (4 of 1882) "were intended to apply to contracts between mortgager and mortgagee" and "an agreement binding only as between the mortgagers is not a 'contract to the contrary' within the meaning of the section"—*per White C. J.* and *Benson J.* in *Rama Bhadrachar v. Srinivasa Ayyanagar*, *I. L. R.* 24 *Mad.* at p. 93.

In the alternative—The words "in the alternative" as used in S. 26 of the *Code of Civil Procedure* "apply to cases in which there is a doubt as to who is the person entitled to sue upon the cause of action, for example that of a sale to an agent in which there may arise a difficulty as to whether the principal or the agent should sue—*per Innes J.* in *Lingammal v. Venkatammal*, *I. L. R.* 6 *Mad.* at p. 243.

In the case—The words "in the case" in S. 337 (2) of the *Criminal Procedure Code* (Act 5 of 1898) "are purposely used so as to include the preliminary enquiry and do not refer to the trial only"—*per Benson J.* in *Q. E. v. Ramasami*, *I. L. R.* 24 *Mad.* at p. 323.

In the form—See *Henry v. Armitage* 1883, 53 *L. J. Q. B.* 111.

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Intimidation—"The word 'intimidation' not being *vocabulum artis*, has not, necessarily, a meaning in a bad sense, and in order to give it legal efficacy, it should at least appear, from the context of the indictment what species of fear was intended and upon whom such fear was meant to operate"—See *O'Connell v. Reg.* 9 *Jin* 25—See "Criminal Intimidation"

Intiqal—The word *intiqal* as used in *Hindustani* has the broadest meaning in connection with "alienation," "conveyance" "assignment," and "transfer" of rights in immovable property—*per* Mahmood J in *Sheoratan Kuor v. Mahfil Kuor*, *F. L. R.* 7 *All.* 258. "The word *gimat*, (in the preemption clause of a *wajib-ul-arz*) does not limit the applicability of the word *intiqal* to sales only"—*per* Banerji J. in *Sital Prasad Rai v. Budhu Rai*, *All. W. N.* 1899 p 3; see also *Buland Khan and another v. Thakor Das and another*, *P. R.* 1887 No 10.

Intoxicating—As used in *S. 3, cl. 9* of the *Bombay Abkari Act 5* of 1878 is not confined to its derivative meaning, merely, poisonous. The word must be taken to be used in its popular sense which would include the effects produced by cocaine—*Emperor v. Jamsetji Cawasji, Caina*, *I. L. R.* 27 *Bom.* 551 *per* Candy Acting C. J. and Chandvarkar J.

Intoxicating drug—Defined, *Act 13, 1889, S. 3 (1) (d)*; *Act 12* 1896, *S. 3 (J)*; *Bom. Act 5, 1878, S. 3 (g)*; *Mad. Act 1, 1886, S. 33 (13)*; *Beng. Act 7, 1878 S. 4* (amended by *Act 16, 1895*) See "Spirituous Liquor"

In trust for a specific purpose—See "Specific purpose."

Invention—Defined *Act 5, 1888, S. 4 (1)*—The term "invention" as used in *Act 5* of 1888 (*Inventions and Designs*) means new manufacture—*per* Sale J, *In the matter of the Invention and Desings Act*, *I. L. R.* 23 *Cal.* at p 709; a combination which

is merely the result of placing one known material side by side with another known material and ending in a result which differs only from previous results because the particles or materials thus placed in juxtaposition produce a result which may be considered an improvement is not an "invention" within the meaning of the *Act* (5 of 1888)—*per* Knox and Aikman *JJ* in the *Elgin Mills Co. v. Muir Mills Co.* *I. L. R.* 17 *All.* at p 495.

Inventor—Defined, *Act* 5, 1888, S. 4 (2)

Investigation—Defined, *Act* 5, 1898, S. 4 (1) (l)

Invoice—"An invoice is a written account of particulars of goods delivered to a purchaser and of their prices, and the charges concerning them"—*E. L. E.*

Involved—As used in *Punjab Courts Act* 1884, S. 40 (I) (II) see *Musamat Nikki v. Bishen Das*, *P. R.* 1898 No. 41.

Irrigation work—Defined, *Mad. Act* 14, 1886, S. 2.

Issue—Defined, *Act* 10, 1865 S. 86.

"The word 'issue' has a popular meaning, being often used in the sense of 'children,' and a legal or technical meaning, being used in the sense of 'descendants'.....It is a term of flexible meaning"—*per* Jessel *M. R.* in *Morgan v. Thomas*, 1882. 9 *Q. B. D.* 643, 645.

Issued—As used in *art. 92 Sch. II* of the *Limitation Act* (15 of 1877) "is intended to refer to the kinds of documents to which people commonly apply that term in business, and it has no application to an instrument such as a power to adopt"—*per* Lord Morris in *Hari Bhushan Mukerji v. Upendra Lal Mukerji* *I. L. R.* 24 *Cal.* at p 7 (*P. C.*)

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Issues—Defined, *Act 14, 1882, S. 146*

Istimiradar—Defined, *Regulation 2, 1877, S. 20.*

Istimirari—Means *perpetual*—*Raja Leelanand Singh and others v. Thakur Monorunjan Singh and others*, 5 W. R. p 101; whether it is used in this sense or not depends upon the intention of the parties concerned.—*Ibid* at p 102. See also *Kuroonerkar Mahstee v. Neeladhro Chowdhari*, 14 W. R. 107

Istemrari Mogariri—"The words *istimirari mogarari* do not *per se* import an estate of inheritance"—*per* Sir R. Couch in *Tulshi Prasad Singh v. Ram Narain Singh*, 12 I. A. 205: S. C. I. L. R. 12 Cal. 117, [followed by Strachey C. J. and Banerji J in *Nagesher and others v. Ram Autar and others*, All. W. N. 1900 at p 28];—*per* Lord Davey in *Maharani Beni Prasad Kuori v. Dudh Nath Roy*, L. R. 26 I. A at p. 224 [1899]—*per* Banerjee and Geidt JJ, in *Narsingh Dayal Sahu v. Ramnarain Singh* I. L. R. 30 Cal. 883.

It shall be lawful—"None of the judgments [referring to *In the matter of Thakur Bhagwandas Harjivan*, I. L. R. 4 Bom. 489 and *Julius v. The Bishop of Oxford*, App Cas. 214] lay down an absolute rule that where the words 'it shall be lawful' confer on a court authority to do a judicial act in a certain case, they make it imperative on the court to exercise that authority when the case arises and the exercise of that authority is duly applied for. What they lay down is that the words themselves are always permissive and enabling and never imperative; but that the context, the subject matter of the statute, the nature of the authority or the thing authorized and all the surrounding circumstances may show that the Legislature intended to couple with the authority a duty to exercise it when invoked. Whether the Legislature intended to create an imperative duty or to allow a discretion in the matter, depends upon the nature, the object

and the construction of the Statute itself and not upon the enabling words 'it shall be lawful; which create the authority"—per Strachey *J. in Re Aranvayal Sabhapathy*, 1. L. R. 21 Bom. at pp 300 and 301- See also *Southwork and Vauxhall Water Co. v. Wandsworth Board of Works*, [1898] 2 Ch. at p 60; as used in S. 9 of the *Indian Insolvent Act* (Stat. 11 and 12 Vict. C. 21) must be given their ordinary permissive and enabling sense. *Re Aranvayal Sabhapathy*, 21 I. L. R. Bom. at p 202 [*Supra.*]

Jageer—During the Muhammadan Period "the most general class of grants of revenue was that of Jageers.' This is the general name for all temporary assignments of revenue only without the land. Such a grant is of course included in those assignments which convey the land. All assignments of revenue were originally called *iktaa* or *akta* (a cutting off)—They could not be made to extend beyond the life of the grantee, and might be resumed at the end of any year, and it is a question whether the grant did not cease when the grantee became unable to perform the services attached to the grant"—*Phillips Land Tenures of Lower Bengal* [T. L. L., 1874-75 p 199]—"The Jageer was a grant for the support of troops and of civil establishment, and for charitable or religious purposes. The chief Jageers were for the support of troops, and were called *foujdaries*—These were granted to maintain the frontier armies and garrisons, where probably no revenue could otherwise have been collected..... Jageers of the same kind still exist, although the duties are not required; and it has been held that a *fouj serinjam* which is a Jageer granted upon condition of military service, is not resumable so long as the holder does not refuse to perform the service, but on the other hand it may be resumed and assessed when the services are no longer required or performed. The Jageer was originally not hereditary, but it was frequently renewed in favor of the son of the previous holder. Under British rule, however, it has

become hereditary, and the family share it in the same way as other property"—*Ibid* pp 200, 201.

Jagirdar or Jageerdar—Defined, *Act* 20, 1896, S. 2 (2); *Act* 16, 1887 S. 4 (15); *Act* 20, 1881, S.

Jageer land—Defined, *Act* 20, 1896, S. 2 (1); *Act* 20, 1881, S. 3—In Muhammadan times all the revenue paying land was divided into two classes, the *Khalsa* lands or lands paying revenue into the *khalsa* Shereeta or Royal treasury itself, and the *Jagir* lands, the revenue of which was assigned, and was either remitted to the holder of the land, or paid under the orders of the authorities to military commanders and others for their support"—See *Phillips Land Tenures of Lower Bengal*, p. 81.

"These Jageer lands are sometimes called *lakhiraj* or free from revenue : but this is not strictly a correct term. As far as payment into the treasury is concerned they are *lakhiraj* to the extent to which they are appropriated in *Jageers*, that is they are *lakhiraj* as opposed to *khalsa* lands. But they do pay revenue ; only they pay so much as has been assigned in Jageer not into the treasury but to the Jagirdar. The revenue is alienated not extinguished"—*Ibid* p 192.

Jail—Defined, *Mad. Act* 5, 1869, S. 5.

Jalkar—"Their Lordships are satisfied that the term [*Jalkar*] is a general one, signifying 'water-rights' and might therefore aptly include the right to drift and stranded timbers as well as to right to fishings or any other interest of a similar kind in the produce of the river"—*per* Lord Watson in *Amriteswari Debi v. Secretary of State for India in Council*, 24 I. A. at p. 44.

"The mere use of the word 'jalkar' would not give a right of fishery in a public tidal navigable river. This word may be

perfectly satisfied by applying to the right to fish within enclosed water such as *Jheel* in a Zemindari."—*per Markby* in *Prosunno Coomar Sircar v. Ram Coomar Paroody*, *I. L. R.* 4 Cal. at p 55. See "Immovable Property."

Jama—Defined, *Bom. Act* 6, 1888, *S.* 2 (1) (c); *Bom. Act* 1, 1886, *S.* 3 (4).

Means the entire revenue assessment (exclusive of certain road, education and other cesses separately levied under special laws)—See *Baden Powell's Land System of British India*, vol. I pp 23, 24.

Jamai land—The rent-paying land is called "jamai land."

Jamai tenant—See 'Tenant.'

Jama-kaumil toomar—The ultimate revised form of the rent or revenue roll was called "Jama-kamil-toomar" in the Muhammadan times.

Jangad—See *Ishwardas Tribhwandas v. Kalidas Bhaidas*, *I. L. R.* 20 Bom. at p. 784.

Joint creditors—Joint execution creditors are not "Joint creditors" within the meaning of *S.* 8 of the Limitation Act—*per White C. J.* in *Periasami v. Krishna Ayyan*, *I. L. R.* 25 Mad. at p 435. "The word creditor in its general sense denotes a person 'who has a right by law to demand and recover of another a sum of money on any account whatever'; and standing by itself I doubt if it includes a 'Judgment creditor' or an 'execution creditor' the former denoting one whose claim has been merged into a judgment against his debtor and under which generally execution may be had and the latter a creditor who has obtained a levy upon property belonging to his debtor"—*per Bhashyam Ayyanagar J* *Ibid* at p 442; see also *Seshan v. Rajagopalai*

I. L. R. 13 *Mad.* 236; *Anando Kishore Dass Bak shi v. Anando Kishore Bose*, *I. L. R.* 14 *Cal.* 50; *Zanir Hasan v. Sundar*, *I. L. R.* 22 *All.* 199 *Govindram v. Tatia* *I. L. R.* 20 *Bom.* 383.

Joint Estate—See *Bissonath Chandar v. Srimutty Bamasundary Dasee*, 12 *M. I. A.* at p 59.

Joint family property—The words “joint family property” as used in *art. 127 of the Limitation Act* (15 of 1877) mean “the property of a joint family”—*Ame Raham and Others v. Zia Ahmad and Others* *I. L. R.* 13 *All.* 282; in the Hindu sense of the term—*Patcha v. Mohidin*, *I. L. R.* 15 *Mad.* 57.

Joint-landlords—The words “joint land-lords” in *S. 188 of the Bengal Tenancy Act* 8 of 1885 must be held to include all the co-sharers immediately under whom the tenant holds, whether such co-sharers receive their *Quota* of rent from the tenants jointly or separately—*per Norris and Beverley JJ. in Haladhar Saha v. Rhidoy Sundri* *I. L. R.* 19 *Cal.* at p 603.

Joint undivided estate—See *Bom. Act* 8, 1876, *S. 4.* (ix.)—

Jointly interested—As used in *S. 33 of the Madras Forest Act*, See *Ashtamurthi v. Secretary of State for India in Council* *I. L. R.* 13 *Mad.* 322.

Jotishi Vritti—It is a right to receive certain emoluments as a reward to personal service and is not liable to attachment under *S. 266 (f) of the Code of Civil Procedure*—*per West and Birdwood JJ. in Govind Lakshman Joshi v. Ramkrishna Hari Joshi*, *I. L. R.* 12 *Bom.* 366.

Judgment—“A judgment is the conclusion of a court declaring the rights or remedies to be recognised or awarded between the parties upon facts found by the Court or Jury, or admitted

by the parties, or upon their default in the course of proceedings instituted for the redress of a legal injury"—*E. L. E.*

"A judgment is a decision obtained in an action and every other decision is an order"—*per* Lord Esher *M. R.* in *Onslow v. Commissioners of Inland Revenue*, 25 Q. B. at p 466.

"The 'judgment' referred to in S. 10 of the Letters Patent is the express decision of a Judge of the Court which leads up to and originates an order or decree—*per* Sir John Edge *C. J.* in *Mohammad Naim-ullah Khan v. Ihsan-ullah Khan*, *I. L. R.* 14 All. at p 228; in construing the word 'judgment' in S. 10 of our *Letters Patent* which were prepared in England and use the phraseology of the English Courts, it is impossible to give to it the restricted meaning of the word 'judgment' as defined in the *Code of Civil Procedure*. As used in England it is wide enough to embrace the definitions of *decree*, *judgment* and *order* in that Code"—*per* Burkitt *J.* in *R. Wall v. J. E. Howard*, *I. L. R.* 17 All. at p 442; as used in clause 15 of the Letters Patent of 1865 "means a decision whether final or preliminary or interlocutory which affects the merits of the question between the parties by determining some right or liability—*The Justice of the Peace for Calcutta v. The Oriental Gas Co.* 8 B. L. R. 434; S. C. 17 W. R. 364; followed in *Chundi Dutt Jha v. Pudmanand Singh Bahadur*, *I. L. R.* 22 Cal. at p 929; "means a judgment or decree which decides the case one way or the other in its entirety and does not mean a decision or order of an interlocutory character which merely decides some isolated point not affecting the merits or result of the entire suit—*per* Garth *C. J.* in *Ebrahim v. Fakhrunissa Begam*, *I. L. R.* 4 Cal. 531—See *Tulsee mony Dassee v. Sundri Dassee* *I. L. R.* 26 Cal. 361; *Lutf Ali Khan v. Asgur Reza*, *I. L. R.* 17 Cal. 455; *Kishin Prasad Panday v. Tiluckdhari Lall*, 18 Cal. 182; *Desouza v. Coles*, 3 Mad. H. C. R. 410; *Vasudeva*

Upadhya v. Visva raja Thirthasami, I. L. R. 20 Mad. at p 408; I. L. R. 23 Mad. 329. 449 and 456; *In the matter of the Petition of Janokey Nath Roy*, I. L. R. 2 Cal. at p 407; *Rajah Nilmoni Sigh Deo Bahadur v. Taranath Mukerji*, 9 I. A. at p 180; as used in the *Civil Procedure Code* it is used to denote the decision which the Court is to pronounce after the exhibits have been perused and the parties heard in person or by their respective pleaders—*per* Bayley J in *Sonbai widow of Fuzul Habi Bhai v. Ahmed bhai Habibhai* 9 B. H. C. R. at p 410—As used in S. 15 L. P. see *Appasami Pillai v. Somasundra Mudaliar*, I. L. R. 26 Mad. 437; *Seshagiri Row v. Nawab Askur jung Aftab Dowla*, *Ibid* 502; see also *Musamat Brij Coomari v. Ramrick Das*, C. W. N. vol. 5 p 781. “A Judgment is the sentence of the law pronounced by the Court upon the matter contained in the record”—*Co. Litt.* 39 a, 168 a, quoted in *S. J. D. Defined*, 53—4 V. C. 27, S. 15; *Act* 14, 1882, S. 2.

Judgment debtors—As used in S. 174 of the *Bengal Tenancy Act* (8 of 1885) “does not include a transferee or assignee from a judgment debtor, but must be construed strictly as referring to a judgment debtor alone”—*per* Petheram C J, *Tottenham and Pigot JJ* in *Rajendra Narain Roy v. Pudhy Mohdul*, I. L. R. 15 Cal. 482; see *Act* 14, 1882 S. 2; *Beng. Act* 7, 1880, SS. 56 (a), 8 (a).

Judicial Commissioner—Defined, *Act* 11, 1889, S. 3 (5); *Beng. Act* 1, 1879, S. 2.

Judicial proceeding—Defined *Act* 5, 1898, S. 4 (m), *Act* 2, 1886, S. 37; *Act* 16, 1882, S. 29; *Act* 6, 1876, S. 15; *Act* 8, 1873, S. 69; *Act* 4, 1871, S. 8; *Act* 24, 1870, S. 16; *Act* 45, 1860, S. 193 *Explanation*. *Mad. Act* 1, 1891, S. 3 (16); *Bom. Act* 2, 1890, S. 53 (3). *Bom. Act* 5, 1879, S. 196; *Bom. Act* 3, 1874, S. 72 (1).

As used in S. 193 *Indian Penal Code*, see *Radhika Mohan v. Lal Mohan*, I. L. R. 20 Cal. 719 where it was held that

an inquiry by a Deputy Magistrate under the orders of District Registrar with reference to certain matters arising in regard to the registration of a document was not a judicial proceeding" as used in the section. Order granting or revoking sanction under S. 195 *Criminal Procedure Code* is a "judicial proceeding" as defined in the Code—*per* Collins. C. J. and Benson. J. in *Q. E. v. Shashadari Ayyanagar*, I. L. R. 20 *Mad.* at p 384; as used in S. 6 of Act, 1 of 1868 (*General Clauses Act.*) see the observation of Garth C. J. in *Ranjit Singh v. Meherban Kuor* and another, I. J. R. 3 *Cal.* 662—An inquiry before issue of an order under S. 144 of the *Criminal Procedure Code* (Act 10, 1882), is a "judicial proceeding"—*per* Collins C. J. and Parker J in *Q. E. v. Tirumararasimha Chari*, I. L. R. 19 *Mad.* 18; proceeding under S. 8 of the *Reformatory Schools Act* (5 of 1876) is a "judicial proceeding"—*per* Scott and Candy J. J. in *Q. E. v. Manaje*. I. L. R. 14 *Bom.* 331; as used in S. 2 of Act 10 of 1877 see *Dalpatlohai Bhagubhai v. Amarsang Khema Bhai*, I. L. R. 2 *Bom.* 553.

Quasi-Judicial—Means nothing more than discretionary—*per* Sir Barnes Peacock in *Sinclair v. Broughton*, 9 I. A. at p 162.

Jujmani right—Means the right to participate in the offering made to the idol and not the offerings or presents which are made to the priest himself—*Jwala Chander Chuckerbutty v. Bhubo Sundari Debi*, 20 W. R. 331.

Jumog—"The mercantile transaction termed 'jumog' means more than a simple assignment of a debt made by a debtor who refers his creditor to a third party without divesting himself of his responsibility and indicates a *transfer* of liability from the 'jumogdar,' or original debtor, to the person who accepts the 'jumog' with the consent of the creditor"—*per* Gubbins and

Ross JJ. in *Babu Damodar Das v. Joy Keshen Das*, S. D. A. 1861 (July to Decr.) p 689—See also the observations of Edge C. J. in *Antu Singh v. Ajodhia Sahu*, I. L. R. 9 All. at p 250.

Jurisdiction—"That word ("jurisdiction") is used in two different senses. It may either mean what is ordinarily understood by the term 'jurisdiction' when used with reference to the local jurisdiction of a Court, or pecuniary jurisdiction of a Court or its jurisdiction with reference to the subject matter of a suit, or it may mean the legal authority of a Court to do certain things"—per Banerjee and Brett JJ in *Mohesh Chandra Dass v. Jamiruddin Mullah*, I. R. R. 28 Cal. at p 329; it "must be held to have been used there (in S. 578 *Civil Procedure Code*) in the former and not in the latter sense"—*Ibid*; "the word in its ordinary meaning simply means the legal power or authority of hearing and determining disputes for the purposes of administering justice, and in its broad legal sense it may be taken to mean the power of administering justice according to the means which the law has provided, and subject to the limitation imposed by that law upon the judicial authority. Such limitations may either be territorial or pecuniary with reference to the value of the subject matter in litigation, or the domicile and nationality of the parties, or the class or rank to which the tribunal belongs"—per Mahmood J in *Har Pershad v. Jafur Ali*, I. L. R. 7 All. at p. 350.

As used in S. 622 *Civil Procedure Code* see *Badami Kuor v. Dinu Rai*, I. L. R. 8 All. 111; See also the observations of Mahmood J in *Dhan Singh v. Basant Singh*, I. L. R. 8 All. 520, as used in S. 37 of Act 8 (B. C.) of 1869 see *Pearey Mohan Mukerji v. Raj Kristo Mukerji*, 20 W. R. 385.

Not affecting the jurisdiction of the Court—As used in S. 578 *Civil Procedure Code* means "not affecting the competency of the court to try"—See *Matra Mondal v. Hari Mohan Mul-*

lick, I. R. R. 17 Cal. 155. See Beng. Act 2, 1868, S. 1.

Jury—"A body of men selected and sworn to inquire of certain matters of fact and to declare the truth upon evidence to be laid before them"—*E. L. E.*

Just cause—Defined, *Act 5, 1831, S. 50, Explanation; Act 10, 1865, S. 234 Explanation.* The word 'just' in such a connection as 'just cause' for a court to do anything "does not add much weight though it may add a little"—*per Jessel M. R. in Ex parte Cocks, Re poole, 21 Ch. D. 397 at p 403.*

As used in S. 50 of the *Probate and Administration Act. (5 of 1881)* see *In the Goods of Ganga Bissen Mundra, deceased, 2 C. W. N. 607.*

Justice—Defined, *Bom. Act 3, 1888, S. 3 (g.)*

Justice, Equity and good conscience—Section XXI of the *Bengal Regulation III of 1793* lays down:—"In cases coming within the jurisdiction of the *Zillah* and *City Courts* for which no specific rule may exist, the Judges are to act according to *justice, equity, and good conscience.*" The term "justice equity and good conscience" is "generally interpreted to mean the rules of English Law if found applicable to Indian society and circumstances"—*per Lord Hobhouse in Maghela Rajsingji v. Seikh Musludin, L. R. 14 Ind. App. 89 at p 96; per Burkitt J in the Himalaya Bank Ltd. v. F. W. Quarry, I. L. R. 17 All. at p 261; see also Mussorie Bank Ltd. v. the Himalaya Bank Ltd. I. L. R. 16 All. 53; Seth Chitor Mal v. Shib Lal, I. L. R. 14 All. at p 299.*

In *Seth Chitor Mal v. Shib Lal (supra)* Sir John Edge observed: "Justice, equity and good conscience are captivating terms; but before a Judge applies what may appear to him at first sight to be in accordance with justice, equity and good con-

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science, he must be careful to see that his views are based on sound general principles, and are not in conflict with the intentions of the Legislature or with sound principles recognized by authority. In my opinion, justice, equity and good conscience do not require us in India to go so far afield as the Irish Courts, in order there to seek for, and thence to import into India novel principles of equity based on unsound" analogy "and which further are at variance with the *Transfer of Property Act* 1882 of the Indian Legislature and with the "policy of the Government as declared in its Legislative enactments." With reference to the observation quoted above Sir Bhashyam Ayyanagar J. remarks: "If justice, equity and good conscience do require us in India to go so far afield as the English Courts 'in order there to seek and thence to import into India principles of equity,' we can certainly be pardoned 'to go so far afield as the Irish Courts' for the same purpose"—*Rajah of Vizianagaram v. Rajah Setru cherla Somaseekharaz*, *I. L. R.* 26 *Mad.* at p 703.

Justice of the peace—Defined 33-4 *V. C.* 52, S. 26.

Justice's election—Defined, *Bom. Act* 3, 1888, S. 3 (J.)

Justification—"The word has acquired a some what special meaning in action for defamation. A 'plea of justification' is a plea that the words complained of are true in substance and in fact"—*E. L. E.*

Jute—Defined, *Beng. Act* 1, 1893; S. 3 (3.)

Juvenile offender—Defined, *Act* 6, 1864, S. 5, *Explanation*. As used in S. 5 of *Act* 6 of 1864 (*Whipping Act*) means an offender under the age of 16 years—See *Q. E. v. Din Ali*, *I. L. R.* 6 *All.* 482.

Kanam holders—See *Baden Powell's Land System of British India*, Vol 111 p 161.

Kankoot or danabandi—See "Bhaoli."

Kara'batdar baeeed—See *Gopal Sing & Others v. Ghulam Husain All. W. N.* 1894, p 58.

Karabati—The word "karabati" means not only a male collateral but a near male collateral, *Ranghi Khan & Others v. Musammatt Kamun & others, P. R.* 1889 No. 179 No. 196.

Karabati karibi—"Now I take the general meaning of the expression to be near kinman,' and I think it may be safely affirmed, without attempting to define positively what degrees of kinship would be comprised in the term *karabatian*, that the more restricted circle of kinsmen denoted by the expression 'karabatian karib' would not, in common acceptation, include the 7th. degree"—per Plowden J in *Sita Ram v. Gugar, P. R.* 1879, No. 12

Karao dhureecha—Marriage of widows with the brother of deceased husband—See *Pooranmul v. Tulsee Ram, N. W. P. H. C. R.* 1868 p 350

Karibi—The word "karabi" used by itself in the pre-emptive clause of a wajib-ul-arz to indicate share holders near to the vendor "is ambiguous and inadequate to convey clearly the intentions of the share holders"—per Brodhurst J in *Khuman Singh v. Hardai, I. L. R.* 11 All. at p 44

Keeper of a lodging-house—Defined *Beng. Act* 4, 2871 S. 1

Keeper of a Sarai—Defined, *Act* 22, 1871, S. 2

Khalit—See *Ranchoddas v. Jugaldas, I. L. R.* 24 Bom. at p 417

Khalsa land—In Mahammadan times "all the revenue paying land, or land assessed for revenue, was divided into two classes,

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the *khalsa* lands paying revenue into the *khalsa shereefa* or royal treasury itself; and the *jagir* lands, the revenue of which was assigned, and was either remitted to the holder of the land, or paid under the orders of the authorities to military commanders and others for their support. The *khalsa* lands were the most central and the richest, the *jagir* lands being the less cultivated and less manageable portions of the country, border territory and other tracts in which probably the revenue could be less easily collected through the ordinary civil officers"—See *Phillip's Land Tenures of Lower Bengal T. L. L.* 1875 p. 81.

"The division into *khalsa* and *jageer* lands is said to have been derived from the Hindus, but in truth it arose from the necessities of the case, and was therefore, in one form or another adopted in many countries. For instance the same division is said to have prevailed in Persia" *Ibi* at p. 82.

"The *khalsa* lands furnished the revenue from which such of the expenses of Government as were paid direct were defrayed...The *khalsa* lands included the *Havilly* or household lands, the revenue of which was especially appropriated to the expenses of the Court and the chief officers of State"—*Ibid.*

Khamar lands—Lands originally waste but brought into cultivation were technically called 'khamar lands.

Khankah—"A place where religious mendicants and holy men of the Mahammadan religion temporarily reside"—*Fallon's Hindustani English Dictionary.*

Kharij malgoozar—In Mahammadan times the headman made over the revenue either direct to the superior representative of the Government, or indirectly through a talookdar or zamindar.

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When he paid it directly, he was called an *hazooree* or *kharij* *malgoozar*, while one who paid indirectly was called *mutkooree*—See *Phillip's Land Tenures of Lower Bengal*, p. 32.

Khasra—"The field register and index to the field map of the Land Revenue survey"—*Baden Powell's Land System of British India, Index and Glossary (Vol. III)*

Khata—"Is the ultimate or individual (family) holding in a co-sharing village"—*Baden Powell's Land System of British India Vol. III Index and Glossary*.

Khewat—One of Settlement records, a list of cosharers and proprietors in the village with their interests and shares of revenue payable.—*Baden Powell's Land System of British India, Index and Glossary*.

Khiraj—"When the inhabitants of a country conquered by the Mahomedans were left in the enjoyment of their own Land, a tax called the *khiraj* was to be imposed upon them. There was another form of the land tax for Mussalmans: this was called the *oosher*, and could only be imposed upon believers. The *oosher* of course was a lighter tax being only imposed on land actually productive and in respect of the actual produce, while the *khiraj* was imposed on all land capable of production whether actually made productive or not."—*Phillip's Land Tenures of Lower Bengal* p. 43.

Khot (Bombay, konkan)—Defined *Bom. Act 1, 1880, S. 3 (2)* "Originally a revenue former; whether as a former landowner or local land officer with an ancient hereditary title, or otherwise; now proprietor."—*Baden Powell's Land System of British India Vol. 111, Index and Glossary*.

Khoti land—Defined, *Bom. Act 1, 1880, S. 3 (3)*

Khotki—Defined, *Bom. Act 1, 1880, S. 3 (3)*

Khud kasht—In ancient times “the original settlers in the village with their descendants and those cultivators who had been admitted to share the same privileges, formed the class of *Khudkasht* (own cultivating) ryots, and they had an hereditary right to cultivate the lands of the village in which they resided. They were also called *chuperband* (housetied), *mouroosee* (hereditary) and *thani* (stationary.) Their rights were regulated by custom, probably the custom of many centuries and having at least as much force as any written law”—*Phillip's Land Tenures of Lower Bengal* pp. 12-13. “The Khudkasht class of ryots appears to have been the same as the class of *Meerasadars* in Southern India”—*Ibi* at p 13; “these cultivators held a permanent, hereditary, and although originally an inalienable, yet probably subsequently a transferable, interest in the land”—*Ibi*; they “enjoyed various privileges arising out of their position as the original settlers of the village. They had a preference in the choice of land when any came to be allotted, and no doubt they always occupied the most central and most easily cultivated land. They were at liberty to dig wells upon their land and let out the water; a privilege considered in India to indicate high kind of proprietary right, and guarded with jealousy. They also received *rusooms* or fees from the other cultivators. Some had a right to the services of the servile labourers, who were attached to the community or to an allowance of one-eighth of the crop deducted from their assessment in lieu of such services”—*Ibid* at p 18.

“The Decennial Settlement while enhancing the status and fixing the rights of the Zemindars, did not intend to alter, and did not alter the common law of the country with regard to ryoty tenures: *Khudkasht* ryots, whose tenures commenced at or subsequently to the Decennial Settlement, were still entitled to hold

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such tenures either at the pergunnah, rates, or, what is the same thing, at rates payable for lands of a similar description in the neighbourhood"—*per Seton-Karr J in Thakooranee Dassee v. Bisheshher Mukerji, B. L. R. Full Bench Rulings at p. 278*—"Khudkasht or resident ryots from father to son were always considered to have a right to remain on the land so long as they paid their rent. Customary rates and pergunnah rates recur again and again in our legislation. The zemindar with all his powers and rights, large as they no doubt are, is not an absolute land holder. The ryot has an interest in the land much beyond that of a mere day-labourer or of a person entitled to the wages and the enhanced cost of production. The Regulations and Acts extending over a period of years, universally appeal to precedent, and nowhere actually annul or obliterate the solemn pledges of 1793 (see *Regulation 1 of 1793*) which makes the Decennial Settlement perpetual. Possibly, the legislature in seeking to repair neglect and omission may have extended the privileges of occupancy at fair and equitable rates to classes who otherwise would not have obtained it, had things been left to themselves. *Py-kasht* tenants, and even mere squatters, may now, after twelve years, unless the zemindar be vigilant, claim rights of occupancy, which the Courts interpreting *Act 10 of 1859 (Act 18 of 1873, Act 12 of 1881 and Act 2 of 1901)* may be compelled to uphold in their favour"—*per Seton-Karr, Ibid pp. 284, 285.*

Kidnapping from British India—Defined, *Act 45, 1860. S. 360.*

Kidnapping from lawful guardianship—Defined, *Act 45, 1860, S. 361.*

Kimat—See "Intiqal."

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Kindred—Defined, *Act 10, 1865, S. 20.*

Knew to be likely to be committed—See *Madat Khan and another v. The Empress, P. R. No. 61 (Cr.)*

Knowingly—As used in *S. 68 of the Christian Marriage Act (15 of 1872)* means knowing that the law is being broken—*Q. E. v. Fawher, I. L. R. 14 Mad. at p 345.* See *Q. E. v. Chanchugadu, I. L. R. 8 Mad. at p 422.*

Known occupier of land—As used in *S. 6 of the Madras Forest Act (5 of 1882)* see *Reference under S. 39 of Madras Forest Act, I. L. R. 12 Mad. 203.*

Kohat salt—Defined, *Act 12, 1882, S. 3.*

Kubooliat—A kabooliat is not a lease within the meaning of *S. 13 of Act 16 of 1864*—per Bayley and Macpherson *JJ. in Amjad Ali v. Ala Baksh, 9 W. R. 537.*

Kuch haqiat—See *Shah Wali and others v. Musammam Panah Bibi and others P. R. 1890, No. 133.*

Kulkarni and karnam—The patwari of a village was so called in ancient times.

Kutkina—"Kutkina" is a sub-lease by a farmer or under-farmer who again may have no direct connection with the soil—See *Surwan Singh, Petitioner, 2 Ind. Jur. N. S. 149; Raja Leelanand Singh, v. Surawan Singh, 9 Sev, 311.* Below this are *durijaras* and *durkutkinas* in a line of subinfeudation.

Label—Defined, *Act 4, 1889, S. 5 (3)*

Labour Contract—Defined, *Act 6, 1901, S. (2) (J); Act 1, 1882 S. 3.*

Labour-District—Defined, *Act 6, 1901, S. 2 (x); Act 1, 1882, S. 3; Beng. Act 1, 1889 S. 2.*

Labourer—Defined. *Act 6, 1901, S. 2 (d); Act 1, 1882, S. 3; Act 8, 1873, S. 63; Mad. Act 8, 1878, S. 3.*

“A ‘labourer’ is a man who digs and does other work of that kind with his hands. A carpenter or a bailiff or a parish clerk is not called a labourer”—*per Brett M. R. in Morgan v. The London General Omnibus Company, 53 L. J. Q. B. at p. 353.*

Labouring classes—The term “labouring classes” as used in *Act 1 of 1858* “means not only persons who let their labour for hire, but also persons who habitually engage in manual labour, although they may at the same time be contractors of labour”—*per Turner C. J. and Kindersley J in Q v. Muttu, I. L. R. 6 Mad. at p. 200.*

Laches—“*Laches* or *lasches* is an old *Fr.* word for slackness or negligence or not doing”—*Co. Litt. 380 b* quoted in *S. J. D.*

Laden—Defined, *Mad. Act 1, 1884, S. 3 (ii).*

Lakhiraj land—Jageer lands are sometimes called *lakhiraj* or free from revenue but this is not, a strictly correct term. As far as payment to the treasury is concerned, they are *lakhiraj* to the extent to which they are appropriated in Jageers, that is they are *lakhiraj* as opposed to *khalsa* lands. But they do pay revenue; only they pay so much as has been assigned in Jageer, not into the treasury, but to the Jageerdar. The revenue is alienated, not extinguished—*Phillip's Land Tenures of Lower Bengal (I. L. L. 1875) p. 192.*

Lambardar—Defined, *Act 3, 1901, S. 4 (3)* The word “lambardar” appears for the first time in paragraph 622 of Mr. Holt Macken-

zie's *Minute on the Revenue Administration of North-Western Provinces* in 1819. He proposed among other things that the proprietary bodies be represented by headmen whom he proposed to call *lambardars* (which was adopted, see *Regulation 7* of 1822). In Northern India it has now taken the place of all other names for headmen. There may be one *lambardar*, or more, if there are several divisions in the estate there may be one *lambardar* for each. The term first appears on the Statute Book in *Regulation 9* of 1824—See *Baden-Powell's, Land System of British India, Vol. II* pp 22-23.

As to his responsibility for the payment of the Government Revenue see SS. 143 and 144 of the *N. W. P. and Oudh Land Revenue Act*, 3 of 1901. See also S. 234 clauses (f), (p) and (t) of the same Act. For his appointment see *Board's Circular Department II—No. 13*.

Land—Defined, *Act 24*, 1899, S. 2 (b); *Act 1*, 1894, S. 3 (a); *Act 9*, 1889, S. 4 (1), (g) (1); *Act 16*, 1887, S. 4 (1); *Act 22*, 1886, S. 3 (3); *Act 17*, 1885, S. 3 (3); *Act 20* 1883, S. 3 (1); *Act 9*, 1883, S. 3 (1); *Act 5*, 1882, S. 4; *Act 16*, 1882, S. 2; *Act 19*, 1881, S. 3; *Act 15*, 1879, S. 2; *Act 3*, 1878, S. 3; *Act 10*, 1876, S. 3; *Act 29*, 1839, S. 1; *Act 30*, 1839, S. 1; 52—3 V. C. 53, S. 3; *Beng. Act. 1*, 1887, S. 2; *Beng. Act 4*, 1887, S. 2; *Beng. Act 3*, 1884, S. 6 (5); *Beng. Act 2*, 1886, S. 3; *Beng. Act 9*, 1880, S. 4; *Beng. Act 5*, 1867, S. 6 (7); *Beng. Act 8*, 1886, S. 4 (x); *Beng. Act 6*, 1873, S. 3; *Beng Act 5*, 1876, S. 1; *Bom. Act 3*, 1888 S. 3 (v); *Bom. Act 5*, 1888, S. 2 (d); *Bom. Act 6*, 1886, S. 2 (4); *Bom. Act 5*, 1879, S. 3 (4); *Bom. Act 6*, 1879, S. 3 (6); *Bom. Act 6*, 1873, S. 3; *Bom. Act 2*, 1863, S. 16 (6); *Bom. Act 7*, 1863, S. 32; *Mad. Act 2*, 1886, S. 3 (3); *N. L. O. Act 5*, 1894, S. 3 (1); *Reg. 3*, 1890, S. 64 (4); *Reg. 3*, 1879, S. 2 (1).

“The word land anciently meant ‘whatsoever may be ploughed [Co. Litt. 4 a] and signified nothing but arable land

[*Touch* 91.] Yet in and since the time of *Lad Coke*, and now, it 'comprehendeth any ground, soil or earth whatsoever' [*Co. Litt* 4 A ; *Va. Touch* 91].—*S. J. D.* "The legal meaning of 'land' is not only dry land, but also land covered by water"—*per White J* in *Chundee Churn Roy v. Shib Chunder Mundul*, *I. L. R.* 5 *Cal.* at p. 947 ; *S. C.* 6 *C. L. R.* at p. 278. "The word *land* in its wider signification would no doubt include not only the surface of the ground, but also everything on or under it, for *cujus est solum ejus est usque ad calum*. We are not aware that there is any definition of the word 'land' as used in the Statutes in this country such as is found in the English Statute '13 and 84 V. C. XXI, S. 4. In the *Court Fees Act* the word would seem to be used in a restricted sense, for the Act provides as distinct mode of ascertaining the amount at which relief should be valued according as the subject matter of the suit is land, or houses or gardens"—*per Stanley C. J.* and *Burkitt J.* in *Durga Singh v. Bishesar Dayal*, *I. L. R.* 24 *All.* at p. 225 ; it includes growing crops—*per Shepherd and Benson J. J.* in *Kannam Naidu v. Latchanna Dhora*, *I. L. R.* 23 *Mad.* at p. 493 ; land comprehends what it covers and would include immovable property as recognised and defined in S. 2 (5) *Act* 1 of 1868"—*per Spankie J* in *Jayrani Bibi v. Ganeshi*, *I. L. R.* 3 *All.* at p. 436 and therefore it would include trees growing upon it *Ibi*. The mere mention of the word "lands" in an enactment does not necessarily include within the scope of that enactment all the cases which the term itself may etymologically comprise when there are indications that the purpose of the Legislature does not really extend so far—see the observations of *Westropp C. J.* in *Sukharam v. Adhikari v. Collector of Ratnagiri*, 8 *B. H. C. R.* at p. 257 ; as used in proviso 3 to S. 13 of *Madras Village Courts Act* 1 of 1886) includes house—*Narayanamma v. Kamakshamma*, [*I. L. R.* 20 *Mad.* 21 ; a water course used for purposes of irrigation is "land"

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"land"—*P. R.* 1892 No. 1; so is a well used for such purposes—*P. R.* 1891 No. 62; as used in *S. 10 Court of Wards Act* 35 of 1858 see *Makundi Koeri v. Deputy Commissioner of Chota Nagpur*, *I. L. R.* 29 Cal. 638; it is used in *Act 8* of 1869, (B. C.) in its ordinary sense, quite irrespective of the purposes for which it is applied—*Braja Nath Kandu Chaudhry v. Lowther* 9 B. L. R. 121; as used in clause 4 of *S. 23* of *Act 10* of 1859, see *Rani Durga Sundari Dasi v. Bibi Umdut-un-nisa*, 9 B. L. R. at p. 111; as used in *S. 32* of *Act 7* of 1863, (Bombay) see *The Collector of Sewat v. The Heiresses of Kuvarbai* 2 B. H. C. R. 253.

Land or things attached to the earth or permanently fastened to anything which is attached to the earth—earth when dug or ploughed up so as to be in a state in which it can be put into a cart and taken away ceases to be "land or thing attached to the earth or permanently fastened to anything which is attached to the earth" within the meaning of *S. 22 Indian Penal Code*—*Q. E. v. Shiv Ram* *I. L. R.* 15 Bom. at pp. 702 and 703; but see *Q. E. v. Katappa*, *I. L. R.* 10 Mad. 255.

Lands unappropriated to any holding—as used in *Madras District Municipalities Act* (4 of 1884,) See *Edward Clarke v. The Chairman, Ootacamund Municipal Council*, *I. L. R.* 18 Mad. 310.

Land at the disposal of Government.—Defined, *Mad. Act 5* 1882, *S. 2*; *Reg. 7* 1891, *S. 3* (8); *Reg. 6*, 1887, *S. 2* (8).

Land held for service—*Bom. Act 7*, 1863, *S. 32* (d); *Bom. Act 2*, 1863 *S. 16* (d).

Land holder.—Defined *Act 24*, 1899, *S. 2* (b); *Act 2*, 1901, *S. 3* (5); *Act 9*, 1889, *S. 9* (3); *Act 17*, 1885, *S. 3* (2); *Act 20*, 1883, *S. 3*(3); *Act 12*, 1881, *S. 3* (3); *Beng. Act 6*, 1880, *S. 3*; *Bom. Act 5*, 1879, *S. 3* (11); *Mad. Act 4*, 1886, *S. 2*; *Mad. Act 5*, 1884,

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S. 3 (xi) *Mad. Act* 8, 1865 S. 1; *Mad. Act* 2, 1864, S. 1; N. and O. *Act* 5, 1894, S. 3(2); *Reg.* 3, 1879, S. 2; *Reg.* 1, 1886, S. 3(g); *Reg.* 1, 1888, S. 3(3); *Regn.* 1, 1889, S. 3(2). As used in the *Mad. Act* 8 of 1865, see *Chauki Gounden v. Venkataramanier*, 5 *Mad. H. C. R.* 208. See *Phallu v. Mukarrab*, P. R. 1888, No. 153 (Civil).

Landing place.—Defined, *Mad. Act* 4, 1884, S. 3 (xiv); *Act* 2, 1901, S. 2 (e).

Land in its natural condition.—Defined, *Act* 5, 1882, S. 7, *Explanation*.

Land irrigated from a canal.—Defined, *Bom. Act* 7, 1879, S. 48.

Landlord.—Defined, *Act* 9, 1889, S. 4(3); *Act* 17, 1887, S. 3(4); *Act* 16, 1887, S. 4(6), (7); *Act* 22, 1886, S. 3 (11); *Act* 8, 1885, S. 3(4); *Act* 9, 1889, S. 4(3); *Bom. Act* 5, 1879, S. 3(15); *Mad. Act* 1, 1887, S. 2(2).

Land needed for a public purpose.—Defined, *Mad. Act* 5, 1882, S. 68.

Land occupied by the proprietor.—Defined, *Act* 9, 1883, S. 3(11) *Explanation* I; *Act* 18, 1881, S. 4(5), *Explanation* I.

Land owner.—Defined, *Act* 17, 1887, S. 3(2); *Act* 16, 1887, S. 4(g); *Reg.* 6, 1893, S. 2(4). As used in S. 111 of the *Punjab Land Revenue Act* see *Buta v. Musammatt Jiwani*, P. R. 1898, No. 82 F. B. Chatterji J. remarks:—“Land-owner has a very wide signification and includes many persons whose interests in land are of a limited or ephemeral character e.g. a farmer or transferee for revenue purposes or one, not expressly mentioned in the clause, who is in possession of an estate or any part thereof or in the enjoyment of any part of the profits of the estate”—*Ibi* at p. 289.

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Land revenue.—Defined, *Act 16, 1887, S. 4(10)*; *Act 20, 1883, S. 3(2)*; *Act 2, 1880, S. 2*; *Act 10, 1876, S. 3*; *Act 17, 1887, S. 3(6)*; *Bom. Act 2, 1876, S. 3(2)*; *Regn. 1, 1886, S. 3(e)*; *Act 3, 1901, S. 4(7)*.

The present distinction between "rent" and "revenue" (the King's share) did not exist in former times for the ancient history of the land system in India shows that originally there were only two parties interested in the land, the king and the actual occupant of the land—the tenant. The intermediary, the *zemindar* is a creation of the later times.

As used in *Act 10 of 1876*, see *Narayan Venku, Kalgutkar v. Shakharam Nagu Kore Goumkar, I. L. R. 9 Bom. 462*.

Land suit—Defined, *Act 6, 1900, S. 2*; *Act 18, 1884, S. 3(2)*; *Reg. 1, 1896, S. 3(1)*.

See *Hayat v. Sant Ram, P. R. 1894, No. 20*.

Large navigable river—"Even if a river is not fordable it does not follow that the river comes within the definition of a 'large navigable river' as used in clause 3, S. 4 of *Regulation 11 of 1825*. Every river can to some extent be used by boats, but the words 'large and navigable' must be held to apply to such rivers as the Ganges and Megna upon which navigation can be always carried on"—per Jackson J in *Mohni Mohan Dass v. Khajah Assunoolah, 17 W. R. at p. 73*.

Latrine—Defined, *Mad. Act 4, 1884, S. 3 (xiv)*.

Lavalad—The persian word *lavalad* means "having no male issue. It does not mean *childless*"—*Musammatt Hijjo and Musammatt Hatan v. Meer Mahammad and Shaikh Kabeer, P. R. 1867, No. 54*.

Law—Defined, *Act 2, 1882, S. 4.*

Law in force—The expression “law in force” as used in *S. 230* of the *Code of Civil Procedure* means not only the Limitation Act but also the *Code of Civil Procedure*—*per Muttusami Ayyar and Brandt J J in Kollu Shettali v. Man Jaya, I. L. R. 9 Mad. 454; Misri v. Tulsi Ram, P. R. 1887, No. 54.*

Lawful—As used in *S. 375* of the *Code of Civil Procedure* has reference to the subject-matter or the terms of the compromise, and not to its binding character on the parties to it—*Ala Baksh Khan and others v. Kasim Ali Khan & others, P. R. 1895, No. 48*; as used in *S. 36* of the *Parsi Marriage and Service Act 15 of 1865* has reference to the law to which the parties are subject—*per Fulton J in Kawasji v. Sirinbal, I. L. R. 23 Bom. 282*; by the use of the word “lawful” in *S. 70* of the *Contract Act* the Legislature “had in contemplation cases in which a person held such a relation to another as either directly to create or by implication reasonably to justify an inference that by some act done for another person the party doing the act was entitled to look for compensation for it to the person for whom it was done”—*per Straight J in Chedi Lal, v. Bhagwan Das, I. L. R. 11 All. at p. 243.*

As used in *S. 361, Indian Penal Code* see *Jagannadha Rao, v. Kamaraju, I. L. R. 24, Mad. 284.*

Lawful excuse—Defined, *Act 14, 1882, S. 174, Explanation.* “Lawful excuse” means such an excuse as would in law justify the conduct—*per Pearson and Turner J J in Lekhraj v. Palee Ram, N. W. P. H. C. R. 1869 p. 162.*

Lawful guardian—Defined, *Act 45, 1860, S. 361, Explanation.*

Leading question—Defined, *Act 1, 1872, S. 141.*

Lease—Defined, *Act 4, 1882, S. 105; Act 17, 1879, S. 2; Act 2, 1899, S. 2, sub-section (16); Act 3, 1877, S. 3.*

Lease from month to month—Defined, *Act 4, 1882, S. 106.*

Lease from year to year—Defined, *Act 4, 1882, S. 106.*

Legal discharge—Defined, *Act 5, 1881, S. 84.*

Legal heir—See the observations of Mahmood J in *Fazl Rub v. Khatoon Bibi, I. L. R. 15 All. at pp 44, 35, 30.*

Legal personal representative—Defined, *57-8 V. C. 60, S. 742*

Legal practitioner—Defined, *Act 11, 1889, S. 81(2); Act 17, 1887, S. 3(13); Act 16, 1887, S. 4(16); Act 18, 1881, S. 4(2) Act 18, 1879, S. 3.*

Legal proceeding—Defined, *Act 18, 1891, S. 2(4).*

Legal remuneration—Defined, *Act 45, 1860, S. 161, Explanation.*

Legal representative—The primary meaning of the terms “representative” and “legal representative” is executor or administrator as such of a deceased person. The Courts in India have not confined the terms “representative” or “legal representative” when these terms have been used in the Civil Procedure Code to their primary meaning of an “executor or administrator”—See the observations of Edge, C. J. and Banerji, J. in *Budri Narain, v. Jai Kishun Dass, I. L. R. 16, All. at p. 487.*

As used in S. 364 of the Code of Civil Procedure (*Act 14 of 1882*) must when there are more than one legal representative be read in the plural—*per* Edge, C. J. and Banerji, J. in *Ghamandi Lal v. Amir Begam, I. L. R. 16, All. at p. 212; per* Subramanya Ayyar *Offg. C. J. and Mitchell, J. in Musala*

Reddi v. Ramayya and others, 1 L. R. 23, Mad. 125; does not necessarily mean "legal heirs"—*Charanjit Mal, v. Musammnat Mitho and another*, P. R. 1888, No. 29, does not include any person who does not in law represent the estate of the deceased—*per Matusami Ayyar and Best, J. J in Chatha Kelan, v. Govind Kurumiar*, 1 L. R. 17 Mad. 186, at p. 187, not identical with heir—*Bai Vijkor v. Bhagwan*, 2, Bom H. C. R. 335; as used in *Regn.* 17 of 1806, see *Ganga Gobind, v. Beni Madhab Ghose*, 11, W. R. 548. See *Act 16, 1882, S. 366, Explanation*; *Act 5, 1881, S. 4.*

Legally bound—Defined, *Act 45, 1860, S. 4.*

Legally recoverable—As used in *S. 90, of the Transfer of Property Act* the words "legally recoverable" mean "that the balance must be a balance which the mortgagee is not precluded by the terms of the mortgage from realising otherwise than out of the property sold or a balance the recovery of which is not barred by limitation *e.g.*; the suit might have been brought at a period of time when, if the plaintiff was relying on his personal remedy against the defendant, his suit for the personal remedy would be barred by time although within time as a suit for sale on the mortgage"—*per Edge, C. J. and Blair J in Musaheb Zeman Khan v. Inayatullah*, 1 L. R. 14, All. 513 at p. 518.

Legatee—Defined, *Act 1, 1869, S. 2.*

Legislature—Defined, 33-4 V. C. 52, S. 26; 44-5 V. C. 69, S. 39; 47-48, V. C. 31, S. 18; 52-3 V. C. 63, S. 18(7).

Lekha Mukhi—A well known term in Punjab used to signify a mortgage under the terms of which the (owner) mortgagor remains in possession of the property mortgaged and the produce is handed over to the creditor who puts it in account to the gradual liquidation of the moiety of the mortgage money—

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Sultan Khan and Others v. Jewalla Dass and Others, P. R.
1888, No. 131, at p 353.

Leper—Defined *Act 3, 1898, S. 2(1); Beng. Act 5, 1895, S. 2.*

Leper Asylum—Defined, *Act 3, 1898 S. 2(3).*

Lessee—Defined, *Act 4, 1882, S. 105; Act 11, 1886, S. 3(11).*

Lessor—Defined, *Act 4, 1882, S. 105.*

Letter—Defined, *Act 14, 1866, S. 8.*

Letters of administration—Defined, *Act 14, 1874, S. 3, 55*
V. C. 6, S. 6.

Liable—The words "I am liable to pay" do not amount to an undertaking to pay, but constitute only an acknowledgment of liability to pay—*per Subramania Ayyar and Benson, JJ in Tirupathi Goundan v. Rama Reddi I. L. R. 21, Mad. 50; see Kashi Nath Roy Chaudhari, v. Moyn-ud-din Chaudhari, 1 W. R. 154.*

Liable to be seized—The words "liable to be seized" as used in S. 267 of the Code of Civil Procedure "are words of description pointing out the kind of property in respect of which of an enquiry can be held, viz., any property which is attachable under the decree"—*per Starling, J. in In re-Premji, Trikamdas, I. L. R. 17, Bom. at p 518.*

Liability—Defined, *Act 6, 1882, S. 61, Explanation.* As used in paragraph 2 of S. 113 of *Beng. Act 3 of 1834*, means liability apart from the question of occupation, and must be taken to refer to the liability to assessment or rating of a person who is the occupier of a holding—*Dwarka Nath Dutt, v. Addya Sundari Mittra, I. L. R. 21, Cal. 319.*

Liability to pay rent—Liability to pay for the use and occupation of land by a person between whom and the proprietors of such land there exists no relationship of landlord and tenant is

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"liability to pay rent within the meaning of S. 3 clause (5) of the *Bengal Tenancy Act* 8 of 1885—*per* Prinsep and Trevelyan *J J* in *Mohima Chunder Shaha v. Hazari Pramanik*, *I. L. R.* 17, Cal. 45.

License—Defined, *Act* 5, 1882, S. 52; *Act* 11, 1878, S. 4; 44-5 V. C. 58, S. 174(2).

As defined by S. 52 of the *Indian Easement Act* (5 of 1882) is not, as in the case of the easement, connected with the ownership of any land, but creates only a personal right or obligation—*per* Parsons and Ranade, *J J* in *Sundrabai v. Jayawant*, *I. L. R.* 23, Bom. 397.

Licensed—Defined *Act* 11, 1878, S. 4.

Licensed plumber—Defined, *Bom. Act* 3, 1883, S. 3 (k).

Licensed surveyor—Defined, *Bom. Act* 3, 1888, S. 3(k).

Licensed vendor or manufacturer—Defined, *Beng. Act* 11, 1883, S. 2.

Licensee—Defined, *Mad. Act* 4, 1889 S. 3(m).

Licensee of a Salt Work—Defined *Bom. Act* 2, 1890, S. 3(l).

Lien—"Lien is the right in one man to retain that which is in his possession belonging to another till certain demands of him, the person in possession are satisfied"—*Hammonds, v. Barclay*, 1801, 2 *East* at p. 235. For the distinction between a *charge* and a *lien* see "*Charge*."

Lieutenant-Governor—Defined, *Act* 1, 1867, S. 1; *Act* 3, 1867, S. 1; *Beng. Act* 5, 1876, S. 6(g); *Beng. Act* 7, 1876, S. 3(4); *Beng.* 3, 1876, S. 4(11).

Life—Defined, *Act* 45; 1860, S. 45.

Life boat service—Defined, 57, 8 V. C. 60, S. 742.

Life-tenure—Defined, *Beng. Reg.* 37, 1893, S. 15.

Lift—Defined, *Reg.* 8, 1887, S. 2(7).

Light-house—Defined, 57-8 *V. C.* 60, *S.* 742.

Like offence—The offence of selling wine retail by a person who has only a wholesale license is an offence of a like nature to that of selling wine without a license at all within the meaning of the term 'like offence' as used in *S.* 74; of the *Bengal Excise Act*—*per* Trevelyan and Beverley, *J J* in *Schein*, v. *The Queen-Empress*, *I, L. R.* 16, *Cal.* 799; see *In the matter of Ram Chander Shaw*, *8, C. L. R.* 250.

Line of navigation—Defined, *Beng. Act* 5, 1864, *S.* 1; *Mad. Act* 2, 1890, *S.* 3.

Lineal consanguinity—Defined, *Act* 10, 1865, *S.* 21.

Liquor—Defined, *Bom. Act* 5, 1878, *S.* 3(7); *Mad. Act* 1, 1886, *S.* 3(g); *Mad. Act* 3, 1864, *S.* 2.

Manufacturing liquor—Drawing toddy is not "manufacturing liquor" as defined in clause II of *S.* 3 of the *Bombay Abkari Act* (5 of 1878)—*per* Candy and Fulton *J J* in *Queen Empress v. Pirio Kalio*, *I. L. R.* 18 *Bom.* 428.

Literary and artistic work—Defined, 49—50 *V. C.* 33, *S.* 11.

Litigating under the same title—As used in *S.* 13 of the *Code of Civil Procedure* see *Lakshmanammal v. Tiruvengada Mudali*, *I L.R.* 5 *Mad.* p. 241.

Living in adultery—The words "living in adultery" "implies a course of action more or less continuous"—*per* Benson *J* in *Gantapalli Appalamma v. Gantapalli Yellayya*, *I. L. R.* 20 *Mad.* at p. 476.

Loan—Defined, *Act* 9, 1872, *S.* 241.

Local agent—Defined, *Act* 6, 1901, *S.* 2(m); *Act* 1, 1882, *S.* 3.

Local area—Defined, *Beng. Act* 8, 1895, *S.* 2(d). The words "local area" as used in *S.* 182 of the *Code of Criminal Procedure* only apply to a 'local area' over which the *Criminal Procedure Code* applies—*per* Trevelyan and Beverley *J J*, *In the matter of*

Richitranund Dass v. Bhugbut Perai, I. L. R. 16, Cal. 667; include and was intended to include a district—*Punerdeo Narain Singh v. Ram Sarup Roy*, I. L. R. 25 Cal. 858.

Local authority—Defined, *Act* 10, 1897, S. 3(28); *Act* 9, 1890, S. 135(5); *Act* 13, 1889, S. 6(3); *Act* 11, 1886, S. 8(1); *Act* 2, 1886, S. 3(1) *Act* 18, 1885, S. 16(a); *Act* 13 1885, S. 3(7); *Act* 17, 1884, S. 138(4); *Act* 20, 1883, S. 54(4); *Act* 7, 1880, S. 54; *Act* 11, 1879, S. 3; *Act* 1, 1887, S. 2; *Beng. Act* 9, 1895, S. 2(e) *Beng. Act* 1, 195, S. 4; *Beng. Act* 3, 1885, S. 5, *Beng. Act* 3 1883, S. 2; *Mad. Act* 1, 1891, S. 3(17); *Mad. Act* 1, 1888, S. 2; *N. and O. Act* 1, 1887, S. 2(21).

Local Board—Defined, *Mad. Act* 5, 1884, S. 3.

Local Corps—Defined, *Act* 2, 1901, S. 2(f).

Local Division—Defined, *Beng. Act* 7, 1876, S. 3(5).

Local fund—Defined, *Act* 1; 1871, S. 3; *Mad. Act* 5, 1884, S. 3(vii)

Local Government—Defined, *Act* 10, 1897, S. 3(29); *Act* 25, 1867, S. 1; *Act* 22, 1867, S. 1; *Act* 15, 1865, S. 2; *Act* 18, 1865, S. 3; *Act* 15 1864, S. 4; *Act* 3, 1864, S. 1; *Act* 1, 1859, S. 118; *Act* 13, 1856, S. 2; *Act* 10, 1841, S. 27; *Beng. Act* 7, 1878, S. 4; *Mad. Act* 1, 1891, S. 3(12); *N. and O. Act* 1, 1887, S. 2(22).

Local law—Defined, *Act* 45, 1860, S. 42; 49—50 V. C. 48, S. 27; as used in S. 40, of the Indian Penal Code—see *Ganda Singh*, v. Q. E. P. R. 1894, No. 23 (Crl). at p. 81.

Local Legislature—Defined, 55—6 V. C. 14, S. 6.

Local usage—See *Edward Dalglish and others v. Sheikh Goza-fur Husain*, 2 C. W. N. (Notes of cases, p. CCLXX).

Lodger—Defined, *Beng. Act* 4, 1871, S. 1; *N. and O. Act* 1, 1892, S. 2(4).

"Lodger" is a "tenant with the right of exclusive possession of part of a house, the landlord, by himself or an agent, retaining general dominion over the house itself"—*W. L. L.* But this definition says, E. Foa, in his article on this word embodied in the *Encyclopedia of the Laws of England* "can only be accepted as correct subject to a good deal of reservation". According to him there are four principal uses of the term. Firstly it is often used loosely of a person who enters into a contract for food and lodging without stipulating for the occupation of a particular room or rooms.

Secondly it is employed to designate a person who takes part of or rooms in, a house, the landlord or his agent residing also on the premises and supplying him with what is usually called "attendance".

Thirdly it is applied to a person who takes a part of a house, whether furnished or unfurnished, but brings in his servants or finds his own attendance though the landlord also resides in the house.

Lastly the word is occasionally applied to a person who resides in a house which is divided off into separate tenements approached by a common stair case, a servant or a porter appointed and paid by the landlord to perform specified services for the inmates, residing in some cases upon the premises."

Lodging—As used in S. 8, *Explanation A* of Act 11 of 1865, see *Nobin Chandra v. Binod Kant Shaha*, 19, *W. R.* 341.

Lodging-house—Defined, *Beng. Act* 4, 1871, S. 1; *N. and O. Act* 1, 1892, S. 2(3).

Long voyage—Defined, *Act* 10, 1887, S. 5(3).

Lose or part with his proprietary rights—As used in S. 7, of the *N. W. P. Rent Act* (12 of 1881) see *Madho Bharti, v. Basti Singh*, *I. L. R.* 16, *All.* 337; *Murli Dhar and another v. Pem Raj and another*, *I. L. R.* 22 *All.* 205.

Losing wrongfully—Defined, *Act 45, 1860, S. 23.*

Loss, destruction or deterioration—The words “loss, destruction or deterioration” as used in *S. 75(1)* of the *Indian Railway Act 9 of 1890* “include loss caused by the criminal misappropriation of the parcel by a servant of the Railway administration in charge thereof”—*Balram, Harchand v. The Southern Marhatta Railway, Co., Ltd. I. L. R. 19 Bom. 159.* [*Bayley Acting C. J. and Farran J.*]; see also *Changa Mul v. Bengal N. W. Railway, Co., P. R. 1897, No. 6.*

Low ground—As used in *S. 331* of the *Bombay City Municipal Act [3 of 1888* “is not the same as low-lying ground”—*per Parsons, J. in Municipal Commissioner of Bombay v. Huri Dwarkaji, I. L. R. 24, Bom. at p. 127.*

Low-water mark—Defined, *Act 15, 1879, S. 2; Beng. Act 4, 1887, S. 2; Bom. Act 6, 1886, S. 2(3); Bom. Act 5, 1888, S. 2(e).*

Lower Burma—Defined, *Act 20, 1886, S. 2(1)(b) Act 11, 1889, S. 83 (1).*

Lower passenger deck—Defined, *Act 57—8 V. C. 60, S. 268(6).*

Lunatic—Defined, *Act 34, 1858, S. 2, Act 35, 1858, S. 23; Act 36 1858, S. 18; Act 27, 1866, S. 2.*

“Unsoundness of mind taken by itself is not sufficient to bring a person within the meaning of the term ‘lunatic’ as used in *Act 35* of 1858 unless it would incapacitate him from managing his affairs; nor on the other hand, will a person who is incapable of managing his affairs be a lunatic unless that incapacity is produced by unsoundness of mind”—*Mr. George P. O. Sherman, v. Edwin, Sherman Schorn, 24, W. R. 124.*

Lurking house trespass—Defined, *Act 45, 1860, S. 443.*

Lurking house trespass by night—Defined, *Act 45, 1860, S. 444.*

Lymph—See “Animal Lymph.”

Made—The word “made” as used in ss. 514, 521 *Civil Procedure Code* “does not include the filing of the award”—*per* Jardine J. in *Umersey Premji v. Shamji Kunji*, I. L. R. 13 Bom. 119.

As used in S. 624 *Civil Procedure Code* does not mean presented, but means and includes the hearing and determination of the application for review of Judgment—*per* Straight and Brodhurst JJ, *Puncham v. Jhinguri*, I. L. R. 4 All. 278; see also *Fazal Biswas v. Jamadar Sheikh*, I. L. R. 13 Cal. 231 and the cases cited therein.

Madmaash—A revenue free grant (Bengal)—*Baden Powell's Land System of British India, Index and Glossary*, p. 610.

Madras Act—Defined, Act 10, 1897, S. 3 (30)

Magistrate.—Defined, Act 30, 1852, S. 12; Act 13, 1856, S. 2; Act 20, 1856, S. 61; Act 11, 1857, S. 11; Act 36, 1858, S. 18; Act 24, 1859, S. 1; Act 16, 1861, S. 21; Act 20, 1869, S. 4; Act 9, 1874, S. 3; Act 19, 1876, S. 2; Act 1, 1878, S. 3; Act 19, 1881, S. 3; Act 22, 1881, S. 3; Act 1, 1882, S. 3; Act 10, 1897, S. 3. (31); Act 1, 1867, S. 1; Act 3, 1867, S. 1; Act 1, 1868, S. 3; Act 6, 1901, S. 2 (n); Act 14, 1895, S. 5 (5); Act 12, 1896, S. 3 (1) (d)

As used in S. 26 of the *Indian Evidence Act* (1 of 1872) “includes the Magistrate of *Native States* as well as that of *British India*”—*per* Strachey and Fulton JJ, in *Q. E. v. Nagna Kala*, I. L. R. 22 Bom. 235.

Magistrate of the District—Defined Act 22, 1867, S. 2.

Magistrate of Police—The expression “*Magistrate of Police*” as used in S. 1 of Act 13 of 1859 means Presidency Magistrate—*Lal Mohan Choudhri v. Hari Charan Das Banerji*, I. L. R. 25 Cal. 637.

Mahal—Defined, Act 18, 1881, S. 4; Act 3, 1901, S. 4 (4)

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Mahal is "an estate or group of lands having some tenure or other connection, regarded as a unit for Land Revenue purposes"—*Baden Powell's Land System of British India Index and Glossary*, p. 611

Mahalkari—"Mahalkari" is "a land-revenue officer (in Bombay) in charge of a mahal subordinate to the *mamlatdar* of the taluqa"—*Baden Powell's Land System of British India, Index and Glossary*.

Mahalwar Settlement—The "North-Western Settlement is not always by villages, or in revenue language, 'mouzawar'; the village, is not always the unit of assessment. It is rather 'mahalwar' i. e. the assessment is on an 'estate.' It may happen that an 'estate' held under one title, consists of the whole or portions of several villages; on the other hand, as the result of partitions, there may be more than one estate in a single 'village' or *mouza*" "The estate or group of holdings, owned under one title, i. e. by a single owner, or by a community or proprietary body, is the unit of assessment, or opposed to 'raiyyat wari' method, under which each field or individual holding is separately assessed"—*Baden Powell's Land System of British India* Vol. II p 30.

Mahaz—The meaning of the term *mahaz* as used in a rule laid down in the Settlement Record that in a case of alluvion each of two or more adjoining villages is entitled to the land in front of (*mahaz*) such village is not definite. Each case has to be dealt with on its own peculiar merits—*Fazl and 8 others v. Ghulam Ali Shah*, P. R. 1888, No. 45.

Mahto—"The official or King's headman and accountant under the Dravidian village system"—*Baden Powell's Land System of British India*, Vol. I. pp. 119, 578.

Mails—Defined, Act 14, 1866, S. 2.

Mail bag—Defined, 545 V. C. 31, S. 9; Act 6, 1898, S. 2 (c)

Mail ship—Defined, Act 6, 1898, S. 2 (d)

Maiming—As used in S. 428, Indian Penal Code ‘refers to those injuries which cause the privation of the use of a limb or member of the body’—*per* Rattigan J in *Fatteh Din v. The Empress* P. R. 1881, No. 33 (cr.); has a technical meaning, and imports a permanent injury; wounding is not necessarily maiming”—*per* Plowden J in *Bahawal Shahdad v. Q. E., P. R.* 1891 No. 7 (cr.)

Main—Defined, Act 3, 1903, S. 2 (l).

Maintain—Defined, Act 7, 1903, S. 2 (h).

Maintenance—The law of *maintenance* is confined to cases where a man improperly and for the purpose of stirring up litigation and strife encourages others either to bring actions or to make defences which they have no right to make—See *Petchakutti Chetti v. Kamala Nayakkan*, 1 *Mad. H. C. R.* pp. 157, and 158 [1862-63].

“There are many definitions of *maintenance*, all seeming to express the same idea. Black-stone calls it ‘an officious intermeddling in a suit which no way belongs to one by maintaining or assisting either party with money or otherwise to prosecute or defend it’ (*Bl. Com. m. Book IV C. 10 S. 12*) ‘Maintenance says Lord Coke, signifieth in law a taking in hand, bearing up, or upholding a quarrel or strife, to the disturbance or hindrance of common right’—(*Co. Litt.* 368 b.) There is, perhaps, the fullest and completest of all (definitions) to be found in *Termes de la Ley*.—‘maintenance is when any man gives or delivers to another that is plaintiff or defendant in any action any sum of money or other thing to maintain his plea, or takes great pains for him when he hath nothing therewith to do; then the party

grieved shall have a writ against him called a writ of maintenance' "—*per* Lord Coleridge C. J. in *Bradlaugh v. Newdegate*, 11 Q. B. D. at p 5.

Champerty—" *Champerty* is a species of *maintenance*. It is *maintenance* in consideration of an interest in the subject matter of the action to be maintained,"—*E. L. E.*

The English laws of *maintenance* and *champerty* are not of force as specific laws in India, either in the mofussil or in the Presidency towns. The ground on which contracts of the nature of *champerty* and *maintenance* should be held by the Indian Courts to be invalid is that they are contrary to *public policy*—See *Ram Coomar Coondoo v. Chunder Kanto Moorkerji*, L. R. 4 I. A. 23: S. C. I. L. R. 2 Cal. 233.

A fair agreement to supply money to a suitor to carry on a suit, in consideration of the lender's having a share of the property sued for, if recovered, is not to be regarded as necessarily contrary to *public policy*. But in agreements of this kind the questions are (1) whether the agreement is extortionate and unconscionable, so as to be inequitable against the borrower; or (2) whether the agreement is made not with the *bona fide* object of assisting a claim believed to be just; and of obtaining reasonable compensation therefor, but for improper objects as for the purpose of gambling in litigation, or of injuring others—See *Raja Mohkam Singh v. Raja Rup Singh*, I. L. R. 15 All. 352.—See S. 23, *Indian Contract Act* 9 of 1872.

As used in S. 55 cl (c) of Act 15 of 1883 (*N. W. P. and Oudh Municipalities Act*) means "the keeping up of a market in such a manner as would make it a fit place for the carrying on of a market—having regard to public health and public con-

venience"—*Ganga Narain v. The Municipal Board of Cawnpur*, *I. L. R.* 19 *All.* 313 at p. 323, (Edge C. J and Blair J).

Majority—As used in *Act* 9 of 1875 see *Raj Kumar Roy v. Alfuz-ud-din Ahmad*, 8 *C. L. R.* at p. 925.

Make a document—For the purposes of *S.* 464 of the Indian Penal Code the *making of a document* does not mean writing or printing it but signing or otherwise executing it"—*per.* Garth C. J., *In the matter of Reasat Ali*, 8 *C. L. R.* 57: *S. C. I. L. R.* 7 *Cal.* at p. 355.

Making—As to what constitutes a "making" or "publishing" of an imputation within the meaning of *S.* 499 *I. P. C.* see *Q. E. v. Taki Husain*, *I. L. R.* 7 *All.* 203 *F. B.*

Male issues—The expression *male issues* means sons—See *Srimuti Brainamayi Dassi v. Joges Chander Dut*, 8 *B. L. R.* 400.

Male lineal descendant—As used in *S.* 36 of *Act* 23 of 1868, see *Dad v. Bagh Singh*, *P. R.* 1883, *No.* 34.

Malfeasance—"The words 'malfeasance', 'misfeasance', or 'nonfeasance' independent of contract used in *sch. ii, art. 36* of the *Limitation Act* (15 of 1877) are of the widest import and embrace all possible acts or commissions, commonly known as torts by English lawyers; that is to say wrong independent of contract"—*per.* Farran J, in *Essoo Bhayaji v. The S. S. Savitri* *I. L. R.* 11 *Bom.* at p. 135.

Malgoozar—Defined, *Act* 13, 1851, *S.* 4: *Reg.* 2, 1877, *S.* 2 (*d*) By the term *malgoozar* is generally understood a party paying revenue to Government. All zemindars admitted to settlement engagements are considered to be *malgoozars*, though it does not necessarily follow that every *malgoozar* is a zemindar.—*The Collector of Mirzapur v. Bishen Singh*, *S. D. A. Vol. II* (1854-57) at p. 188.

The headman, in former times, made over the revenue either direct to the superior representative of the Government; or indirectly through a talookdar or zemindar. When he paid the revenue direct he was called in Muhammadan times an *Hazoorree* or *Kharij* malgoozar; but if he paid through a talookdar or zamindar, he was called a *muzkooree* (dependent), *shikmi*, *mofassil* or *shamili* malgoozar"—See Phillip's Land Tenures of Lower Bengal. (T. L. L. 1875) p. 32.

Malice—Malice in connection with actions for damages "is not to be considered in the sense of spite or hatred, but in its wider sense as denoting any wrong or indirect motive—*per* Stanley C. J. and Burdett J. in *Bhim Sen v. Sita Ram*, I. L. R. 24 All. at p 367; "the mere absence of reasonable and probable cause does not of itself justify the conclusion, as a matter of law, that an act is malicious. It is not identical with malice; but malice may, having regard to the circumstances of the case be inferred from it—*per* Stanley C. J. and Burdett J. *ibi*; "it is not to be considered in the sense of spite or hatred against an individual but of *malus animus*, and as denoting that the party is actuated by improper and indirect motives"—*per* Park J. in *Mitchell v. Jenkins*, (1833) 5 B. and A. D. 595 (referred to in *Bhim Sen v. Sita Ram Supra*). In common acceptation means ill-will against a person, but in its legal sense it means a wrongful act done intentionally without just cause or excuse—*Nevill v. Fine Arts and General Insurance Co.*, [1895] 2 Q. B. at p. 161.

Maliciously—"The terms 'maliciously' and 'injuriously' are words all of which have accurate meanings well known to the law, but which also have a popular and less precise signification. An intent to 'injure' in strictness means more than an intent to harm. It connotes an intent to do wrongful harm. 'Maliciously'

in like manner means and implies an intention to do an act which is wrongful to the detriment of another. The term 'wrongful' imports in its term the infringement of some right"—*per Bowen L. J. in Mogul & Co. v. McGregor*, 58 *L. J. Q. B.* 477.

Malik—The word *Malik* used with reference to a female legatee used in the will of a Hindu implies an absolute gift—See *Lala Ramjewan Lal v. Dal Kuer*, *I. L. R.* 24 *Cal.*, 406 and the cases cited therein.

Malik makbuza—Defined, *Act 18, 1881, S. 4*; "proprietor of plot or holding in his possession; used of a person having full rights in his own holding, but who has lost (or never had) any share in the profits of the entire village or estate"—*Baden Powell's Land System of British India, Index and Glossary p. 612*.

Malkana—"The earliest definition of the word *malkana* of which we are aware", says Sir John Edge, "is that given in the answer of *Gholam Husain Khan*, Appendix No. 16 to Mr. Shore's Minute of 2nd April, 1788, when he said:—'*Malkana* is the inalienable right of proprietorship but *nankar* depends upon fidelity and attachment to the State and a due discharge of the public services'—[See *Land-holding and the Relation of Land-lord and Tenant in various countries* by C. D. Field, p. 738, Note 1]. This definition probably would not now be considered as strictly correct or sufficiently wide. In *Wilson's Glossary of Judicial and Revenue Terms* and of useful words occurring in official documents relating to the administration of the Government of British India, 1855, *malkana* is described as 'pertaining or relating to the *malik*, or proprietor, as his right or due; applied specially in revenue language to an allowance assigned to a *Zamindar* or to a proprietary cultivator who from some cause

such as failure in paying his revenue, or declining to accede to the rate at which his lands are assessed, is set aside from the management of the estate and the collection and payment of the revenue to Government, which offices are either transferred to another person or taken under the management of the Government Collector: in such case a sum not less than 5 per cent and not exceeding 10 per cent on the net amount realized by the Government was finally assigned to the dispossessed landlord—(*Beng. Reg. I, VII, XL iii, 1793, VII, 1882*).—It was applied formerly to an allowance made to the headman by the other villagers, or, when authorized to collect and pay the revenue of the village, by the State”—*Churaman v. Bulli, I. L. R. 9 All. at p 596*—“It seems to me that the right to raise *malkana* is a distinct proprietary right and that it constitutes an interest in the land”—*per Phear J. in Herranand Sheo v. Ozeeran, 9 W. R. 102*; “*malkana* is not rent, nor has it, the elements of rent. It is a right to receive a portion of the profits of the estate for which the Government has made a settlement with another person, the real proprietor having neglected to come in and make a settlement”—*per Sir Barnes Peacock in Boalee Singh v. Neemoo, Behoo, 12 W. R. 498*. See also *Bhag Singh v. Ghasita, P. R. 1883, No. 68*; it is an annual recurring charge on immovable property—*Hurmuzi Begam v. Hirday Narain, I. L. R. 8 Cal. 921*; it is that which comes to the proprietor in respect of his ownership and as a mode of enjoying his ownership—*Mohomed Karamat-oolah v. Abdul Majeed, N. W. P. H. C. Rep, 1869 p. 205* [Sir Morgan C. J. and Ross J]; see also *Govind Chunder Roy Chaudhary v. Ram Chandra Chaudhary, 19 W. R. 94*, is a right to receive a portion of the profits of an estate for which Government may make a settlement with another person when the real proprietor neglects to take a settlement—*per Okinealy and Ghose JJ. in Surendro Prasad Bhattacharji v. Kedar Nath Bhattacharji, I. L. R. 19 Cal. at p. 12.*

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See also *Baden Powell's Land System of British India, Index and Glossary*, p. 612.

Mamlatdar—The native Land-revenue officer in charge of a taluqa or division of a district (Bombay)—*Baden Powell's Land System of British India, Index and Glossary*, p. 612.

Man—Defined, *Act 45, 1860, S. 10.*

Manufacture—Defined, *Act 5, 1888, S. 4 (6).*

“The word ‘manufacture’ is not a term usually applied to books, but even if it may correctly be applied to the whole process by which books are prepared, it certainly seems impossible to apply it to that portion of the process, known as authorship which though most important, is ineffectual without printing and publication”—*per* Fulton J. in *Radha Krishna v. Kissori Lal*, *I. L. R. 26 Bom.* at p. 292.

Manufacture of salt—*Act 12, 1882, S. 3.*

Manufacturing liquor—See “liquor”

Market—Defined. *Act 3, 1899, S. 3 (24)*; as used in *S. 66 Municipal Act 6 of 1873 (Bombay)* see *Q. E. v. Magan Haijivan, I. L. R. 11 Bom.* 106.

Marriage—Defined, *Act 15, 1865, S. 2.*

Marriage with another woman—Defined, *Act 4, 1869, S. 3.*

Married daughter—“The term (married daughter) does not necessarily mean a daughter whose husband is alive—*per* Norris J. in *Charu Chander Pal v. Nobo Sunder Dasi, I. L. R. 18 Cal.* at p. 329.

Marzulmout—Under the Muhammadan Law the term “marzulmout” is applicable not only to diseases which actually cause death but also to diseases from which it is probable that death

will ensue, so as to engender in the person affected with the disease an apprehension of death—*Musammal Lubbi Bibi v. Musammal Bibban Bibi*, N. W. P. H. C. R. 1874 p. 159.

Masonry building—Defined, *Act 3*, 1899, S. 3 (25).

Master—Defined *Act 8*, 1878, S. 3; *Act 15*, 1879, S. 2; *Act 1*, 1882, S. 3; *Act 21*, 1883, S. 6; *Act 1*, 1887, S. 3 (8); *Act 10*, 1897, S. 3 (32); *Act 1*, 1867, S. 1. *Master of a ship*—*Act 9*, 1873, S. 3.

Mata and mata pitran—See the observations of Sargent C. J. in *Bai Daya v. Natha Govind Lal*, I. L. R. 9 Bom. 279.

Material—Some of the meanings of 'material' are 'important', 'momentous', 'essential', 'of consequence', 'not to be dispensed with'—*per Brodhurst J.* in *Ganga Prasad v. Jag Lal Rai*, I. L. R. 11 All. at p. 342.

As used in S. 125 of the Code of Civil Procedure means more than relevant; it means material to the case and the relief prayed for at the stage of the case when discovery is sought—See O'Kinealy's Civil Procedure.

Material defects—The words "material defects" as used in S. 55 Transfer of Property Act include a defect in the title to an estate—*per Farran C. J.* and *B. Tyabji J.* in *Haji Essa Sulleman v. Doyabhai Parmanand*, I. L. R. 20 Bom. 522.

Material error—The words "material error" as used in S. 439 of the Criminal Procedure Code (*Act 10* of 1882) "do not include an error in the appreciation of evidence"—*per Scott J.* in *Q. E. v. Magan Lal and Moti Lal*, I. L. R. 14 Bom. at p. 118.

Material irregularity—As used in S. 311 of the Code of Civil Procedure, see *Ganga Prasad v. Jag Lal Rai* I. L. R. 11 All. 333. *Brodhurst J.* observes—"Though the word 'illegality' does not of course include 'irregularity' the

latter word as used in S. 311 of the Civil Procedure Code is, I think, wide enough to include an illegality and was probably there employed to avoid surplusage"—*ibi* at p. 342; *Mudarsuk Maracayar v. Palaniappa Chatti*, I. L. R. 23 Mad. 628. As used in S. 622 "include the irregularity of procedure materially affecting the merits of the case"—*per Trevelyan J. in Sheo Bux Bogla v. Shib Chander Sen*, I. L. R. 13 Cal. 225 at p. 231; *per* Straight and Tyrrel JJ. in *Badami Kuar v. Dina Rai*, I. L. R. 8 All. p. 111 F. B.; "an application of a section of the Code to a case to which it does not apply is material irregularity within the meaning of the section"—*Sheo Bux Bogla v. Shib Chander Sen*, *Supra*; see also *Joseph v. The Salt Co.*, I. L. R. 17 Mad. 371; *Amir Hasan v. Sheo Baksh Singh*, I. L. R. 11 Cal. 6, P. C.; *Magni Ram v. Jiwa Lal*, I. L. R. 7 All. 336, F. B.; *Alston v. Pitambar Das*, All. W. N., 1903 p. 104, F. B. S. C. I. L. R. 25 All.

Matter—As used in S. 373 Civil Procedure Code means "the subject of legal action, consideration, complaint or defence or the fact or facts constituting the whole or part of a ground of action or defence"—*per* Subramania Ayyar and Benson JJ. in *Achuta Menon v. Achuta Nayer*, I. L. R. 21 Mad. at p. 37; as used in S. 28 Civil Procedure Code, see the observations of Mahmood J. in *Narsingh Das v. Mangal Dubey*, I. L. R. 5 All. at p. 175.

Maturity—Defined, Act 26, 1884, S. 22.

Maund—Defined, Act 9, 1890, S. 3 (17).

Maxims, Legal—"Law like moral philosophy or politics has its maxims which sum up in a pregnant sentence some leading principle or axiom of law.....The merit of the maxim is two-fold. It is a useful generalisation of law wherein every student who would become his governor may note, as Wingate says, how the same key opens many locks, or to put it in another way, how all the cases are reducible to a few theses. [Lord Bacon puts it

quaintly thus: 'This delivering of knowledge in distinct and disjointed aphorisms doth leave the wit of man more free to turn and toss and to make use of that which is so delivered to move several purposes and applications']. The other merit of the maxim lies in its epigrammatic form. The Latinised dress in which it generally appears is part of this epigrammatic form"—*E. L. E.*

"The maxims of English law, like the rules of the Common Law, derive their source and sanction from an immemorial antiquity, from frequent judicial recognition; and from the imprimatur of the sages of our law. One writer, indeed—Wingate—has gone so far as to describe them as prime emanations of the Eternal Wisdom"—*Ibi.*

May—"The language (certainly found in authorities entitled to very high respect) which speaks of the words 'it shall be lawful', (*may*) and the like, when used in public Statutes, as ambiguous, and susceptible (according to certain rules of construction) of a discretionary or an obligatory sense, is in my opinion inaccurate. I agree with my noble and learned friends who have preceded me, that the meaning of such words is the same whether there is or is not a duty or obligation to use the power which they confer. They are potential, and never (in themselves) significant of any obligation. The question whether a Judge or a public officer, to whom a power is given by such words is bound to use it upon any particular occasion, or in any particular manner, must be solved *aliunde*, and in general it is to be solved from the context, from the particular provisions or from the general scope and objects, of the enactment conferring the power"—*per* Lord Selbourne in *Julins v. Bishop of Oxford*, 49 L. J. at p. 585. "When a power is deposited with a public officer for the purpose of being used for the benefit of persons who are specifically pointed out, and with regard to whom a definition is supplied

by the Legislature of the conditions upon which they are entitled to call for its exercise, that power ought to be exercised and the Court will require it to be exercised"—*per Cairns L. C. ibi* at p. 580. "I think that great misconception is caused by saying that in some cases 'may' means 'must'.—It never can mean 'must' so long as the English language retains its meaning, but it gives a power, and then it may be a question in what cases when a Judge has a power given him by the word 'may' it becomes his duty to exercise it"—*per Cotton L. J., In re Baker Nickols v. Baker, L. R. 44 Ch. D. 262 (270)*

"The word 'may' with one context may be merely directory, with another absolutely imperative.—When a Statute confers an authority to do an act which the public interests demand, the directory, permissive or enabling words used in it must be construed as imperative, unless there be special grounds for a contrary construction. But this construction can be placed only for the purpose of giving effect to the intention of the Legislature and in the absence of proof of such intention the word 'may' must be taken to be used in its natural, therefore in a permissive and not in an obligatory sense"—*per Straight Offg. C. J., Brodhurst and Duthoit JJ. in Damodar Das v. Gokul Chand, I. L. R. 7 All. at p. 83; See Vasudeva Charya v. Municipality of Sholapur, I. L. R. 22 Bom. at p. 387; See the observations of Sir Barnes Peacock in Delhi and London Bank v. Orchard, I. L. R. 3 Cal. 47 P. C.: S. C. 4 I. A. 127 at p. 135; 'its natural meaning is permissive and enabling only'—per Farran C. J. in Haji Musa Haji Ahmad v. Permianand Nursey, I. L. R. 15 Bom. at p. 218.*

As used in S. 339 of Bengal Municipal Act. (3 of 1884) is not to be construed as "shall"—*Miran v. Chairman of Motihari Municipality, I. L. R. 17 Cal. 329; as used in S. 9, Regula-*

tion 8 of 1827 does not imply discretion—*per* Birdood J. in *Shri Veshwambhar Pundit v. Vasudeva Pundit*, I. L. R. 13 Bom. 37; as used in S. 14, Act 12 of 1881 means “shall”—*Ram Prasad v. Dina Kuar*, I. L. R. 4 All. 515; as used in S. 265 of the Contract Act “has somewhat similar force to the words “it shall be lawful” in a Statute which merely make that legal and possible which there would otherwise be no right or authority to do”—*per* McDonell and Field JJ. in *Prosad Das Mullick v. Russick Lal Mullick*, I. L. R. 7 Cal. 157; as used in S. 372 of Act 8 of 1859 does not imply by *some possibility*, but means *may not improbably*—*Ram Chandra Choudhry v. Kashi Mohan*, 21 W. R. 57; as used in ss. 196 and 229 of the Indian Succession Act is *directory*—*per* Macpherson J. in *DeSueza v. The Secretary of State*, 12 B. L. R. at p. 428; as used in S. 191 of the Criminal Procedure Code (Act 10 of 1882) does not make it optional with the Magistrate to hear a complainant but refers rather to the action of the Magistrate in taking cognizance of an offence in either of the specified courses in which the facts constituting the offence may be brought to his notice—*Umer Ali v. Safer Ali*, I. L. R. 13 Cal. 334; as used in S. 137 of Act 32 of 1860, See *The Collector of Fureedpur v. Gooroo Das Roy*, 11 W. R. 425. See also *J. P. Wise v. Raj Kishen Roy*, 6 W. R. at p. 89 (Miscellaneous Rulings) *May at the discretion of the Court*.—The expression “may.....Court” as used in S. 53 of the Code of Civil Procedure amounts to no more than saying “it shall be lawful for the Court,” or the Court “may if it thinks fit”—*Damodar Das v. Gokul Chand* [*Supra*] at p. 83.

As used in S. 327 of Act 8 of 1859, see *Mata Din v. Bhanwantee*, S. D. A. 1862, at p. 76 *May presume*—Defined Act 1, 1872, S. 3.

Mean—When the Legislature intends to speak exhaustively in defining a term it uses the word “mean” or “means”—*Balvant Rao*

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T. Bapaji v. Purshotam Sidheshwar, 9 B. H. C. R. at p. 106—
See "Includes."

Medical subordinate—Defined, *Act. 9, 1894, S. 3 (8); Act 12 1894, S. 4 (6).*

Medicated article—"The term *medicated article* as used in S. 62 of the Bombay Abkari Act 5 of 1878 applies to something which is manufactured and by that manufacture is imbued with certain medicinal properties. It does not therefore include cocaine which is a medicine *per se*"—*Emperor v. Jamsetji Cawasji Caina*, I. L. R. 27 Bom. 551 (Candy Acting C. J. and Chandavarkar J.).

Meerasdar—See "Khud Kasht."

Mesne profits—Defined, *Act 14, 1882 (Civil Procedure Code) S. 211, Explanation.* The term "mesne profits" means "the amount which might have been received from the land deducting the collection charges—It does not include damage resulting from their not having been paid as they became due, or loss of interest year by year"—*per Sir Barnes Peacock in Hurro Durga Choudharani v. Surat Sundari Debi*, I. L. R. 8 Cal. 332: S. C. 9 I. A. 1 at p. 5; *per McDonnell and Field JJ. in Brojendro Coomar Roy v. Madhub Chunder Ghose*, *ibi* p. 343. Where the question was whether interest, not mentioned in the decree was allowable in the execution department it was held by their Lordship of the Privy Council that the expression *mesne profits* included, under S. 211 of the Code of Civil Procedure, interest on them—*Girish Chunder Lahiri v. Shoshi Shikhareswar Roy*, I, L. R. 27 Cal. 951: S. C. 27 I. A. 124—See also the observations of West J. in *Vinayak Amrit Deshpande v. Abaji Harbatrav*, I. L. R. 12 Bom. at p. 418—As used in S. 11 of Act 23 of 1861 see the observations of Phear J. in *Haramohini Choudharain v. Dhanmani Choudharain* at p. 140.

Message—Defined, *Act. 13, 1885, S. 3.*

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Military Custody—Defined *Act. 12, 1894, S. 4 (18)*.

Military officer— Defined, *Act. 3, 1902, S. 2 (e)*.

Military Police officer—Defined, *Act. 15, 1887, S. 3 (1)*.

Military reward—Defined, *Act. 12, 1894, S. 4 (12)*.

Military Stores—Defined, *Act. 11, 1878, S. 4*.

Milk—The term 'milk' is "applied to revenue free grants under the Moghul Empire, which were made in perpetuity and included the land, so that the grantee was freehold owner"—*Baden Powell's Land System of British India, Index and Glossary* p. 613.

Mill—Defined, *Act. 2, 1896, S. 3 (6)*.

Mill-gearing—Defined, *Act. 15, 1881, S. 2*.

Mine—Defined, *Act. 8, 1901, S. 3 (d)*,

"The primary idea suggested to the particular mind by the use of the word (*mine*) is an underground working in which minerals are being or having been wrought. It is certainly often used in contrast to quarry' as indicating an underground working as opposed to one open to the surface. It is, in a secondary sense, very frequently applied to a place where minerals commonly worked underground are being wrought"—*per Lord Herschell in Lord Provost and Magistrate of Glasgow v. Farie, 13 App Cas at pp. 683-4*.

Minerals—"The word 'minerals' imports *prima facie* and apart from any context all substances other than the vegetable matter forming the ordinary surface of the ground. In the widest sense clay is unquestionably a mineral. The popular use of the word is often narrower, and when people talk of minerals they frequently use the word in reference to metals or metalliferous ores—*Per Lord Herschell in Lord Provost and Magistrate of Glasgow v. Farie, 13 App. Cas. at p. 683*.

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Minor—Defined, *Act. 10, 1865, S. 1; Act. 1. 1869, S. 2; Act. 15, 1872, S. 3; Act 5, 1873, S. 3; Act. 1, 1877, S. 3; Act. 5, 1881, S. 3; Act. 8, 1890, S. 4 (l).*

As used in *S. 7 of Act, 15 of 1877* must be construed with reference to the general law as laid down in the *Indian Majority Act of 1875—Bai Shirinbai v. Kharshedji, I. L. R. 22 Bom. 432*; “the definition in the *Indian Succession Act.* of ‘minor’ and ‘minority, does not apply in cases when a person enters into a contract in his own behalf, and not in any representative character under that *Act*”—*per Couch C. J., in Sultan Chand v. Smyth, 12 B. L. R. 358*; as used in *S. 12 of Act. 14 of 1859* see *Hari Mahadaji Joshi v. Vasudev Moreshwar Joshi, 2 Bom. H. C. R. 344* *Minor under the jurisdiction of the Court of Wards.*—The phrase “minor under.....Wards” as used in *S. 3 of the Indian Majority Act. of 1875* means a person of whose estate the Court of Wards has actually assumed the management, not a person of whose estate the Court of Wards might with the sanction of the Government take charge—*Periyasami v. Sheshadari Ayyanagar, I. L. R. 3 Mad. 11*
Minor children—Defined *Act. 4, 1869, S. 3.*

Minor offence—“The words (*minor offence*) have not been defined by law; they are to be taken not in any technical sense, but in their ordinary sense”—*per Banerjee J in Q. E. v. Sitanath Mandal I. L. R. 22 Cal. at p 1007.*

Mint—Defined, *Act 23, 1870, S. 2.*

Mint rules—Defined *Act 23, 1870, S. 2.*

Miscarriage and failure of justice—As used in *S. 38 of the Presidency Small Cause Court Act (15 of 1882)* see *Vassonji Triumji and Co. v. The Southern Maharashtra Railway Co., I. L. R. 17 Bom. 14.*

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Miscellaneous applications—As used in S. 16 of the *Bombay Civil Court Act*. 14 of 1869 see *The Assistant Collector of Prant Bassein v. Ardesir Framji Moss*, I. L. R. 16 Bom. 277.

Miscellaneous proceedings—"Proceedings in execution of decree would not in our opinion ordinarily fall within the term *miscellaneous proceeding*. They should be regarded rather as stages in the suit or proceeding in which the decree or order under execution was passed; whereas by miscellaneous proceedings we should understand ordinarily those applications commenced by petition and not by plaint, of a less formal character than suits, and generally if not universally calling on the Court to exercise special powers conferred on it by the Legislature such as applications for certificates to collect debts, applications for probate or letters of administration, applications for appointment of guardians &c; and possibly also the term miscellaneous proceedings may also be applied with propriety to those proceedings which the Court is empowered to institute of its own motion such as proceedings for the institutions of prosecutions in certain cases"—In the matter of the petition of *Harshankar Prasad* I. L. R. 1 All. at p 179 F. B.

As used in S. 38 of *Act*. 23 of 1861 includes all proceedings, not being regular suits or appeals for which no procedure is expressly provided, and in that sense it embraces proceedings in execution—*Ibi*.

Mischief—Defined, *Act* 45, 1860, S. 425.

Misconduct—As used in *Cl. (a)*, S. 521 of the Code of Civil Procedure "should be interpreted in the sense in which it is used in English Law with reference to arbitration proceedings. It does not necessarily imply moral turpitude but it includes neglect of the duties and responsibilities of the arbitrators and of what

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Courts of justice expect from them before allowing finality to their award"—*per* Mahmood J. in *Ganga Sahai v. Lekhraj* I. L. R. 9 All, 253 at pp 264—66.

Misfeasance—See "Malfeasance."

Misnomer—"The omission of the titles 'Honcurable,' 'Maharaja' and 'Sultan' does not constitute such a misnaming of the plaintiff as to justify the dismissal of the plaint"—*per* Frere and Holloway JJ, in *Sri Raja Seta Rama Krishna Rayuddappa Ranga Rao Bahadur Garu v. Sri Raja Vijay Ram Gajpoty Raja Bahadur*—3 Mad. H. C. R. 31.

Misrepresentation—Defined, Act 9, 1872, S. 18.

Mistake or inadvertence—The words (mistake or inadvertence) as used in S. 28 of the *Court Fees Act*. (7 of 1870) mean mistake or inadvertence on the part of the Court or its officers and not on the part of the appellant or his advisers—*Balkaran Rai v. Gobind Nath Tewari* I. L. R. 12 All, 129. F. B.

Mixing—Ginning together two varieties of cotton which had been mixed before, constitutes *mixing* within the meaning of S. 2 of *Bombay Act*, 9 of 1863 (*Cotton Frauds*)—*Reg. v. Chouthmal Lachmiram*, 11 Bom. H. C. R. 144.

Model—Defined. Act. 15, 1889, S. 2 (4).

Mofussil—"Mofussil" in India is the term opposed to Presidency and Presidency denotes the seat of Government as Calcutta, Madras, Bombay, so that the distinction is much equivalent to town and country—*Aga Muhammad Jaffar v. Muhammad Suddick*—*Perry's Oriental Cases* at p 398.

Mokasa—The word "Mokasa" means villages or lands or a share in the rule over them, and revenue arising from them granted on con-

dition of military service or in inam—*Sheikh Sultan Sani v. Sheikh Ajm ud-din*, 20 I. A. p 57; either rent-free or at a low quit-rent on condition of service—*Sri Raja Sobhanadri Appa Rao Bahadur v. Sri Raja Venkatanarasunha Appa Rao Bahadur*, I, L. R. 26 Mud. 403—*Mokhassadars*—See *Ibi*.

Moksoomah—See “*Khiraj*.”

Mokurrari—The word *mokurrari* does not import anything more than fixed rent—*Permeshwar Partab Singh v. Padmanand Singh*, I. L. R., 15 Cal. at p 343; it does not necessarily import perpetuity—*per* Sir Richard Couch in *Musammatt Bilasmony Dassi v. Raja Shiva Prasad Singh*, 9 I. A. at p 38; *The Government of Bengal v. Nawab Jafar Husain*, 5 M. I. A. 467; *Sheo Prasad Singh v. Kally Dass Singh*, 5 C. L. R. 138 S. C. I. L. R. 5 Cal. 543.

Mokurrari Istemrari—“The words *Mokurrari Istemrari* in a lease do not imply any heritable character in the grant, as the term *mooouroosi* does. They imply permanency, from which, in a secondary sense such heritable character might be inferred it being always doubtful whether they mean permanent during the life-time of the grantee or permanent as regards hereditary character. The words do not *per se* convey an estate of inheritance, but such an estate can be created without the addition of any other words; circumstances under which the lease was granted and the subsequent conduct of the parties being capable of showing the intention with sufficient certainty to enable the Court to hold that the grant was perpetual. The rule is perfectly general and is not subject to the qualification that it is by local custom that the meaning of the term is restricted”—*per* Banerjee and Geidt JJ in *JJ. Narsingh Dayal Sahu v. Narain Singh*, I. L. R. 30 Cal. 883; not sufficient to create a permanent and hereditary tenure —*per* Pratt and Mitra JJ. in *Agin Bindh*

Upadhia v. Mohan Bikram Shah *Ibi* p 20—See also the following cases. *Musammat Lakhu Kuar v. Hari Kishen Singh* 3 B. L. R. A C. 226; *Raja Lilanand Singh Bahadur v. Thakur Manoranjan Singh*, 13 B. L. R. 124; *Musammat Ameer-un-nisa Begam v. Maharajah Het Narain Singh*, S. D. A. (1853) 643; *Sorodar Singh v. Raja Mehandra Narain Singh*, S. D. A. (1860) 577.

Money—See *Williams v. Williams* 8 Ch. D. at p. 793.

Month—Defined, Act 13, 1856, S. 2; Act 24, 1859, S. 1; Act 45 of 1860, S. 49; Act 21, 1866, S. 2; Act 1, 1868, S. 1; Act 10, 1897, S. 3 (33),

As used in S. 230 Civil Procedure Code (Act 8 of 1859) means English calendar month—*Dadu Ansar v. Bulgovinda Skankar appa*, 5 B. H. C. R. p 41; it is used in the same sense in Act 8 of 1869—*Kashi prasad Sen Megee v. Jamir Paskar*, 2 C. L. R. 265; *Luchmipat Singh v. Raj Coomari*, 23 W. R. 275. See "Calendar month. Monthly intervals—See *Volkart Brothers v. Ratnavelu Chetti*, I. L. R. 18 Mad. at p. 69.

Mortgage—Defined, Act 4, 1882, S. 58 (a): Act 27, 1866, S. 2; Act 28, 1866, S. 1.

Mortgage by conditional sale—Defined, Act 4, 1882, S. 58 (c).

Mortgage deed—Defined, Act 2. 1899, S. 1 (17)

Mortgaged—As used in Cl. (2) of S. 3 of *Dekhan Agriculturist Act* 17 of 1879, see *Kashiram Mulchand v. Hiranand Suratram*, I. L. R. 15 Bom. 30.

Mother—The term "mother" in Chap. II, S. 3 of the *Mitakshra* does not include step-mother—*Ramanand v. Surgiani*, I. L. R. 16 All. 221; *Mari v. Chinnammal*, I. L. R. 15 Mad. 107,

Mouroosee ryot—See "*Khudkasht ryot*"

Mouza—"The usual revenue term for the 'village"—*Baden Powell's Land System of British India, Vol. III, Index and Glossory.*

Moveable property—Defined *Act 45, 1860, S. 22; Act 10, 1865, S. 1; Act 1, 1868, S. 1; Act 3, 1877, S. 3; Act 10, 1897, S. 3 (34).*
 Crops which have not been severed from the ground are not *moveable property* within the meaning of the term as used in *Act 11 of 1865 (S. C. C.)—Muhammad Suleman v. Satu Harji, 5 Bom. H. C. R. at p. 91*: the definition given in the *General Clauses Act 1 of 1868* applies to the *Small Cause Court, Act 11 of 1865—Umed Ram v. Doulat Ram, I. L. R. 5 All. at p. 566 F. B.* as used in *art. 89, Sch. 11 of the Limitation Act* include *money—Asghar Ali Khan v. Khurshed Ali Khan I. L. R. 24 All. 43 P. C.*

Mukaddam—Defined, *Act. 18, 1881, S. 4; Act 1, 1883, S. 2.*
 "Like other terms employed in your revenue correspondence there is some uncertainty in the import of the term mukaddami settlement. It is not ryotwar, and it is not a settlement with what you call a recorded proprietor, but something between these two. The mukaddam is a proprietor, but not what you call a recorded proprietor, that is a proprietor entered in the Collector's book as having a title to be recorded as contractor, but when the engagement is made with the mukaddam, he also is a contractor, and he contracts for a certain amount of revenue to be derived by him from a certain number of contributors"—*Despatch of the Court of Directors in the year 1830.*

"In the absence of any special evidence to the contrary a mukaddami tenure does not imply that the mukaddam has any heritable or transferable interest in the tenement"—*per Knox Acting C. J. and Aikman J. in Bhagwati Prasad and another v. Hanuman Prasad Singh, I. L. R. 23 All. 67.*

Multifariousness—"By multifariousness in a bill is meant the

improperly joining in one bill distinct and independent matters and thereby confounding them—as for example, the uniting in one bill of several matters perfectly distinct and unconnected against one defendant or the demand of several matters of a distinct and independent nature against several defendants in the same bill’—*Story’s Equity Pl*; S. 271 quoted by Mahmood J. in *Nursingh Das v. Mangal Dubey*, *I. L. R. 5 All.* at p. 172.

Municipal committee—Defined, *Act 11, 1881, S. 2.*

Municipality—Defined, *Act 15, 1873, S. 3; Act 15, 1883, S. 2; Act 17, 1884, S. 2; Act 18, 1889, S. 3 (1); Act 20, 1891, S. 3 (1).*

Municipal drain—*Beng. Act 3, 1899, S. 3 (26).*

Municipal market—*Beng. Act 13, 1899, S. 3 (27).*

Municipal slaughter house—*Beng. Act. 3, 1899, S. 3 (28).*

Must—See “*Shall*”

Mustajir—Means a farmer—See *Babu Dhanpat Singh v. Gooman Singh*, *11 M. I. A.* at p. 462.

Mutual—“Dealings to be mutual must be transactions on each side creating independent obligations on the other, and not merely creating obligations on one side and the other side being merely discharges of these obligations.”—*per Jardine and Ranade JJ.* in *Ganesh v. Gyanu*, *I. L. R. 22 Bom.* 607.

Mutual credit—Lord Brougham thus observes: “Now although, generally speaking, debt and credit are correlative terms, and *A.* giving credit to *B.* may seem to imply that *B.* is indebted to *A.* yet it may be admitted that the introduction of the words ‘mutual credit’ extends the right of set-off to cases where the party receiving the credit is not debtor *in presenti* to him who gives the credit”—*Young v. Bank of Bengal*, *1 M. I. A.* at pp. 144 and 145.

NA.

Muzkoorie—See "*Kharij malgoozar*."

My Proprietary share—See *Upooroop Tewary and others v. Lalla Bandhjee Suhay* I. L. R. 6. Cal. 749.

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NA.

Nadarad—The word "nadarad" as used in the memorandum of customs of a village does not of itself signify that the custom has fallen into disuse or ceased to exist"—per Stanley C. J., Knox and Blair JJ. in *Ali Nasir Khan v. Manik Chand*, I. L. R. 25 All. 90.

Name—Defined, Act 4, 1889, S. 2 (5).

Named—The arbitrators who are left for future election are not "named" in the agreement within the meaning of S. 523 *Civil Procedure Code*—per Farran C. J. in *Fazulbhoy Mehralli Chinoy v. The Bombay and Persia Steam Navigation Company Limited*, I. L. R. 20 Bom. 232 at p. 236.

Nankar—"Originally the zamindar was bound to account for all he collected from the raiyats; these payments were not *his rents*, but the revenue assessed by the State and increased from time to time. He was to pay in all to the treasury, less a certain percentage and some cash allowances which were carefully specified." The allowance thus granted to him was called *nankar*—*Baden Powell's Land System of British India*, Vol. I p. 514.

Naslan bad naslan—The words "naslan bad naslan" are not essential to convey an hereditary right—*Toolshi Pershad Singh v. Rajah Ram Narain Singh*, 12 I. A. 205. A gift with the words *naslan bad naslan* attached to it confers an absolute interest—per Lord HobHouse in *Thakur Harihar Baksh v.*

Thakur Uman Pershad, I, L. R. 14 Cal. at p. 307 P. C.

Native christian—Defined, *Act 15, 1872, S. 3.*

Native husband—Defined, *Act 21, 1866, S. 2.*

Native law—Defined, *Act 21, 1866, S. 2.*

Native officer—Defined. *Act 12, 1894, S. 4 (4).*

Native state—Defined, *Act 15, 1872, S. 3; Act 9, 1876, S. 2.* As used in *Act 11 of 1872* see *Empress of India v. Sarmukh Singh, I. L. R. 2 All. 218.*

Native subjects of Her Majesty—The expression “native subjects of Her Majesty” as used in *Act 21, 1879, S. 8* “means only native subjects *de jure* and not *defacto*, and that occasional residences in British territory cannot be taken to render a person who is not *de jure* a subject, a subject for the purpose of criminal jurisdiction being exercised over him for an act committed in a foreign territory, which if committed within British territory would have been an offence cognizable by our municipal courts”—*per* Plowden and Elsmie JJ. in *Fakir v. Empress, P. R. 1885, No. 1 (Cr.)*

Native wife—Defined, *Act 21, 1866, S. 2.*

Natural Justice—See the observations of Edge C. J. in *Q. E. v. Mannu, I. L. R. 19 All. at p. 411.*

Natural stream—“A natural stream is a stream whether permanent or intermittent, tidal or tideless, on the surface of land or underground, which flows by the operation of nature only, and in a natural and known course”—See *Explanation to Illustration (J.) of S. 7 of the Easements Act (5 of 1882).*

Nazdiki hissadar—The words “nazdiki hissadar” occurring in the pre-emption clause of the wajibularz of a pure zemindari

village "must be taken to relate to nearness of blood or relationship"—*per* Edge C. J. and Brodhurst J. in *Gursaran Singh v. Akhandanand Singh and others* All. W. N. 1890 p. 227.
—See *Hissadar Karibi*."

Nazir—Defined, *Act* 10, 1859, S. 168.

Nazul—"Property escheated or lapsed to the State: commonly applied to any land or house property belonging to Government either as an escheat or as having belonged to a former Government."—*Baden-Powell's Land System of British India* Vol. II p. 616.

Necessary—As used in S. 33 of *Bombay Act* 6 of 1873, see *Bhawani Shankar v. The Surat City Municipality*, I. L. R. 21 Bom. at p. 189.

Necessary cause—As used in S. 54, *Regulation* 2 of 1827, see *In re Narayan Sadashiva Kali*, I. L. R. 23 Bom. at p. 658.

Neej-jote—The land cultivated by a headman or other village officers at a lower rate than the body of the villagers was in former times called his *Khudkasht*, *seer*, or *neejjote* land—see *Phillip's Land Tenures of Lower Bengal*, T. L. L. 1874-75 p. 114.

Negligence—"Action for negligence proceeds upon the idea of an obligation towards the plaintiff to use care, and a breach of that obligation to the plaintiff's injury"—*per* Lord Penzance in *Swan v. The North British Australasian Company*, 31 L. J. Ex. p. 437.

Negotiable instrument—Defined, *Act* 26, 1881, S. 13.

Negotiate—For the meaning of the word *negotiate* with reference to Government Securities see *Watson v. Jonmenjoy Coondoo*, I. L. R. 8 Cal. 93.

Negotiation—Defined, *Act 26, 1881, S. 14.*

New and important matter or evidence—The words “new and &c.” as used in *S. 623* of the *Code of Civil Procedure* “do not apply to the non-production of a ruling in force when the decree was passed”—*per Strachey C. J. in Abdul Sadig v. Abdul Aziz, I. L. R. 21 All. at p. 153.*

News paper—Defined, *Act 14, 1866, S. 2.*

Next—“is only an abbreviation of the word *nearest*”—*per Knight Bruce V. C. in Booth v. Vicins, 13 L. J. Ch. 147.*

Next of Kin—The term “next of kin” as used in *ss. 6 and 7* of the *Parsee Succession Act* (21 of 1865) is synonymous with the word ‘relatives’—*per Strachey J. in Harji Bhai Cursetji Bhandupwala v. Barjorji Sorabji Ashburner I. L. R. 22 Bom. 909.*

Defined, *Act 2, 1874, S. 3.*

Nihang—See *Basdeo v. Garib Das, I. L. R. 13 All. at p. 259.*

No evidence—As used in *2nd and 3rd* clauses of *S. 289* of the *Code of Criminal Procedure* “must not be read as meaning no satisfactory, trustworthy or conclusive evidence”—*per Jardine and Telang JJ. in Q. E. v. Vajiram, I. L. R. 16 Bom. 414.*

No saleable interest—The words “no saleable interest” as used in *S. 315* of the *Code of Civil Procedure* mean “nothing to [2] sell’,,———*Munna Singh v. Gajadhar Singh, I. L. R. 5 All. 577 F. B.*

Non-cognizable offence—Defined, *Act 5, 1898, S. 4 (n).*

Non-feasance—See “Malfeasance”

Non-occupancy ryot—As used in *S. 3, Ch. 5* of the *Bengal*

Tenancy Act. 8 of 1885 see Binod Lal Pakrashi v. Kalu Pramanik, I. L. R. 20 Cal. 708.

Non-Regulation Provinces—"The Governor and Council of each Presidency town was empowered to enact a Code of Regulations for its Government, in the days before 1834, when a General Legislative Council was formed. When therefore any territory was added by conquest or treaty to a Presidency—as it was supposed would be the ordinary course—such territory or province came under the existing *Regulations*; and further the course of its *official appointments* was governed by an *Act*. of Parliament. But when Provinces were acquired which were not and could not be, annexed to any of the three Presidencies their official staff could be provided as the Governor General pleased, and was not governed by any statute. Such provinces were then called *Non Regulation Provinces*'"—*Baden Powell's Land System of British India* Vol. I p. 50.

Non resident—The term non-resident as used in *S 37, Cl. (a)* of the *Code of Civil Procedure (Act 10 of 1877)* "covers every absence which may reasonably be supposed to have been within the contemplation of the Legislature in using that term"—*per Melvill and Kembell JJ. in Ram Chandra Sukharam v. Keshav Durgaji, I. L. R. 6 Bom. 100.*

North-Western Provinces and Oudh—North-Western Provinces combine groups of territory separately acquired:

(1) The old 'Benares Province' which was permanently settled by an extension of the Bengal Permanent Settlement Regulation in 1795 and is represented by the present districts of Benares, the northern part of Mirzapur, Jaunpur, Ghazipur and Balia "

"The Benares Province was acquired in 1775 by treaty from the Nawab of Oudh. For sometime it was left in charge

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of its Raja who paid a fixed tribute or land revenue to the Government."

(2) "The 'Ceded Districts,' that is, ceded by the Nawab of Oudh in 1801; these are represented by Azamgarh, Gorakhpur, Basti, Allahabad, Fatehpur, Cawnpur, Etawah, Mainpuri, Etah, Shahjehanpur, Budaoon, Bareilly, Pilibhit, Moradabad, Bijnor and the Tarai Perganas"—

(3) "The conquered Districts obtained by the victories of Lord Lake (A.D. 1803), and consisting of Agra, Muttra, Aligarh, Bulandshahar, Meerut, Mozaffarnagar, and Saharanpur. The Delhi districts were also among the conquered districts of 1803 but under circumstances created by mutiny were transferred to the Punjab in 1858."

(4) "The districts of Dehra Dun and the mountain districts of British Garhwal and Kamaoon were ceded in 1815 after the Nepal War."

(5) "The Bundelkhand districts, Banda and Hamirpur, and the Districts of Jalaun, Jhansi and Lalitpur were variously acquired—by lapse, forfeiture, and agreement between 1840 and latter years"—*Baden Powell's Land System of British India Vol. II pp. 2 and 4.*

"Oudh was annexed in 1856 and in 1877 the two Provinces were amalgamated"—*Ibi.*

North-Western Provinces and Oudh Act—Defined *Act 10, 1897, S. 3 (35).*

Not affecting the jurisdiction of the Court—See "jurisdiction."

Not competent—As used in *S. 44 of the Evidence Act* refer to a Court acting without jurisdiction—*per Collins C. J. and Parker J. in Kelilama v. Kelappan, I. L. R. 12 Mad. at p. 230.*

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Not duly stamped—As used in S. 3 (10) of the *Stamp Act* see *Reference under the Stamp Act I. L. R. 11 Mad. 377.*

Not proved—Defined, *Act 1, 1872, S. 3.*

Notice—Defined, *Act 4, 1882, S. 3; Act 2, 1882, S. 3.* Notice “is the warning to a party to a *lis* to enable him to resist a possible result, that is to say, not merely information that, that which is threatened will, or may possibly, happen in a matter in which he, the person to whom notice is given, is concerned, but also that he can avoid such result if he takes proper measure to do so. This explanation of the word ‘notice’ is ample enough to cover cases arising out of Common law or Chancery law or the Criminal law, and indeed all departments of law”—*per* Mahmood J. in *Q. E. v. Pohpi, I. L. R. 13 All. at pp. 180 and 181*; the definition of *notice* in S. 3 of the *Transfer of Property Act* “is as comprehensive a definition of ‘notice’ as any that has ever been given”—*per* Banerjee and Stevens JJ. in *Preonath Chattopadhyaya v. Ashutosh Ghose, I. L. R. 27 Cal. 358*; the definition of the word ‘notice, in S. 3 of the *Transfer of Property Act* correctly codifies the law as to notice which existed prior to the passing of the *Act*”—*per* Edge C. J., Brodhurst and Mahmood JJ. in *Churaman v. Balli, I. L. R. 9 All. 591.*

Mere registration is not notice within the meaning of S. 81 of the *Transfer of property Act*—*per* Trevelyan and Beverley JJ. in *Inderdewan Prasad v. Gobind Choudhary, I. L. R. 23 Cal. 790*;—*per* Banerjee and Stevens JJ. in *Preonath Chattopadhyaya v. Ashutosh Ghose, I. L. R. 27 Cal. 358*; *per* Collins C. J. and Handley J. in *Shan Maun Mull v. Madras Building Co. I. L. R. 15 Mad. 268.*—For a contrary view see *Janki Prasad v. Kishon Dutt, I. L. R. 16 All. 478* [Edge C. J. Knox, Blair, Banerjee and Burkitt JJ.]; *Dhond Bulkkrishna Kanitkar v. Raoji, I. L. R. 20 Bom. 290* [Jardine and Ranade JJ.]; *Bal-*

makundas Atmaram v. Moti Narayan, I. L. R., 18 Bom. 444 [Candy and Fulton JJ]; *Lukshman Das Sarup Chand v. Dusrat*, I. L. R. 6 Bom. 163 [Westropp C. J., Melvill and Kemball JJ].

Constructive notice—"Constructive notice is the knowledge which the courts impute to a person upon a presumption as strong of the existence of the knowledge that it cannot be allowed to be rebutted, either from his knowing something which ought to have put him to further inquiry or from his wilfully abstaining from inquiry, to avoid notice"—*per* Farwell J., *Hunt v. Luck*, [1901] 1 Ch. at p. 52. "The doctrine of constructive notice", the same learned Judge observes, "imputing as it does knowledge which the person affected does not actually possess, is one which the courts of late years have been unwilling to extend. I am not referring to cases where a man wilfully shuts his eyes so as to avoid notice, but to cases like the present, where honest men are affected by knowledge which every one admits they did not in fact possess"—*Ibi.* at p. 48. Markby J. observes: "If we consider notice as merely signifying knowledge, we have then a question of fact which is sufficiently difficult to determine. But notice has by no means this simple signification. It means something more than this, but what more, no man can tell. It is described sometimes as 'constructive notice'; sometimes as implied notice; sometimes as 'notice in law'"

Notification—Defined, Act 12, 1894, S. 4 (1); Act 20, 1891, S. 3 (7); Act 17, 1887, S. 3 (15); Act 16, 1887, S. 4 (16); Act 20, 1883, S. 3.

As used in S. 2 of Bengal Act 3 of 1884 includes an order made under S. 234 of Bengal Act 5 of 1876—*Baikuntha Nath Das v. Lalit Mohan Sirkar*, I. L. R. 20 Cal. 699.

Notified—Defined, Act 20, 1891, S. 3 (8); Act 20, 1883, S. 3.

Nuisance—Defined, Act 3, 1899, S. 3 (29).—The word "nuisance"

means "both annoyance that is actionable, and also that which is not actionable; and when the question is whether an annoyance is actionable, the word 'nuisance' introduces an equivocation which is fatal to any hope of a clear settlement"—*per* Erle C. J. in *Brand v. Hammer Smith and City Railway Co.*, *L. R. 2 Q.B.* 223 at p. 247, referred to by Subramanya Ayyar *offg. C. J.* in *Haji Ismail Sait v. Trustees of the Harbour Madras*, *I. L. R. 23 Mad.* at p. 406; "in a restrictive covenant means legal nuisance—*per* Bacon V. C. in *Harrison v. Good* *L. R. 11 Eq.* 338.

' Annoyance is a popular word for nuisance, nuisance being the legal technical word, while annoyance means something which though frequently called nuisance is not a nuisance technically, and therefore is popularly, but not technically, a nuisance"—*per* Kekwih J. in *Tod-Heatly v. Benham*, *20 Ch. D.* at p 85; as used in *Cl. 2, S. 133* of the *Criminal Procedure Code*, see *Indra Nath Banerji v. Q. E.*, *I. L. R. 25 Cal.* 425. See "Annoyance"

The distinction in law between "trespass and nuisance is, where the immediate act itself occasions a prejudice or is an injury to the plaintiff's person house land &c., and where the act itself is not an injury, but a consequence from that act is prejudicial to the plaintiff's person, house, land &c. In the first case trespass *vi et armis* [words formerly inserted in pleadings in England to characterize a trespass—mean with force and arms] will lie; in the last it will not; but the plaintiff's proper remedy is by an action on the case—*Reynolds v. Clarke*, *2 Lord Raymond's Report* at p. 1402.

Number—Defined, *Act 17, 1864, S. 1.*

Numerous parties—The term 'numerous parties' as used in *S. 30* of the *Civil Procedure Code* "means parties capable of

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being ascertained"—*Sajedur Raja v. Baidynath Deb*, *I. L. R.* 20 *Cal.* 397.

Oath—Defined *Act* 10, 1897, *S.* 3 (36); *Act* 1, 1868, *S.* 1; *Act* 13 1856, *S.* 2, *Act* 45, 1860, *S.* 51.

Oath and solemn affirmation—Defined, 51-2 *V.*, *C.* 28, *S.* 46.

Obiter—"The expression of an opinion by a Court not material to the subject matter of the suit has a binding force"—*per* Lord Macnaughton in *Hemant Kumari Debee v. Jogendra Nath Roy*, *I. L. R.* 22 *Cal.* at p. 220 *P. C.*

"Unless it is established that a decision already given after careful consideration is grossly erroneous I should be loath to depart from it, even if its correctness be open to question and even if the opinion expressed in it is only *obiter*"—*per* Banerji *J.* in *Wahid-un-nissa v. Gobardhan Das*, *I. L. R.* 21 *All.* at p. 459.

Object—As used in *S.* 295 of the *Indian Penal Code* "does not include animate objects"—*per* Norris and Macpherson *JJ.* in *Romesh Chander Sanyal v. Hiru Mondal*, *I. L. R.* 17 *Cal.* 852; *per* Edge *C. J.*, Straight, Brodhurst, Tyrrell and Mahmood *JJ.* in *Q. E. v. Imam Ali*, *I. L. R.* 10 *All.* 150.

Objection—The words "objection" and "dispute" in ss. 105 and 106 of the *Bengal Tenancy Act* (8 of 1885) are not synonymous terms—*The Secretary of State for India v. Kajimuddy*, *I. L. R.* 23 *Cal.* 257.

Obligation—The usual meaning attached to the word "obligation" "is the same in which the Roman Lawyers used *obligatio*, *i. e.* as denoting a duty arising *ex contractu* or *quasi ex contractu*, *ex delicto* or *quasi ex delicto*. But the word in *S.* 5 of the *Specific Relief Act* is not restricted in meaning to certain kinds of legal duties. It is used in the sense in which it was employed by the analytical jurists, Austin and Bentham, *viz.* synonymous

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with duty"—*Nelson's Law of Injunctions* pp. 13 and 14 (edition 1900).

Defined, *Act 1, 1877, S. 3.*

Obscene—"In interpreting the word (*obscene*) as used in ss. 292 and 293 of the *Indian Penal Code*, the Courts may rightly follow *Reg. v. Hicklin* (*L. R. 3 Q. B. 360*) where Lord Cockburn *C. J.* says 'I think the test of obscenity is this, whether the tendency of the matter charged as obscene is to deprave and corrupt those whose minds are open to such immoral influence and into whose hands a publication of this sort may fall'"—*per Jardine and Ranade JJ. Q. E. v. Prashram, Yeshwant, I. L. R. 20 Bom. 193.*

Obstruction—As used in *S. 133 Criminal Procedure Code (Act 10, 1882)* see *In re Maharana Shri Jaswant Singji, I. L. R. 22 Bom. 988.*

Occupier—Defined *Beng Act 3, 1899, S. 3 (°0).*

Occupier's rate—Defined, *Act 8, 1873, S. 3.*

Of a nature cognizable—The words "of a nature cognizable" as used in *S. 586 of the Civil Procedure Code* "seems to have reference to the subject matter of the suit as distinguished from the amount of the claim—*per White C. J. in Soundraman Ayyar v. Sennia Narchan, I. L. R. 23 Mad. 547 at p. 554.*

Offence—Defined, *Act 45, 1866, S. 40; Act 10, 1897, S. 3 (37); Act 5, 1898, S. 4 (1) (o) Act 12, 1894, S. 4 (22); Act 1, 1887, S. 3 (9)*—See *Nedaram Thakur v. Joonab, I. L. R. 23 Cal. 248.*

Offence attended by criminal force—The term "offence &c." as used in *S. 522, Criminal Procedure Code, (Act 10, 1882)* "means an offence of which criminal force forms an ingredient"—*per Banerjee and Wilkins JJ. in Ramchandra Boral v. Jagandria, I. L. R. 25 Cal. at p. 439.*

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Offences involving a breach of the peace—The words “offences &c.” as used in S. 110. Cl. (e) of the *Criminal Procedure Code* ‘mean offences in which a breach of the peace is an ingredient and not offences provoking or likely to lead to a breach of the peace’—*per* Prinsep and Mitra JJ. in *Arun Samanta v. Emperor*, I. L. R. 30 Cal. 366.

Offence of the same kind—The words “offence &c.” as used in S. 453, *Criminal Procedure Code*. (Act 10, 1882) are not limited to offences against the same person—*Mannu Mga v. The Empress*, I. L. R. 9 Cal. 371.

Offences under the Indian Penal Code—A contempt of the High Court by a libel published out of Court when the Court is not sitting, is not included in the words ‘offences under the *Indian Penal Code*’, although the contempt may include defamation. Such an offence is something more than mere defamation and is of a different character. It is an offence which by the Common Law of England is punishable by the High Court in a summary manner by fine, or imprisonment, or both”—*per* Sir Barnes Peacock in *Surendra Nath Banerji v. The Judges of the High Court of Bengal*, 10, I. A. at p. 179.

Offensive matter—Defined, *Beng. Act 3*, 1899, S. 3 (31).

Office—Defined, *Act 11*, 1876, S. 3—See “Employment”, Office under Her Majesty—Defined, *Act 15*, 1889 S. 2 (6).

Officer—Defined, *Act 14*, 1873, S. 2; *Act 2*, 1874, S. 3; *Act 12*, 1894, S. 4 (5).

As used in S. 21, Cl. 9 of the *Indian Penal Code* “means a person employed to exercise to some extent a delegated function of Government: he must be either himself armed with some authority or representative character or his duties must be immediately auxiliary to those of some one who is so armed—*per*

West J. in *Reg. v. Ramajirav Jivbajirao*, 12 B. H. C. R. p. 1.

Officer in charge of a police station—Defined, *Act 5, 1898*, S. 4 (1) (p).

Officer of Government—The term “officer of Government” “is not synonymous with public servant”—Officers of Government are no doubt public servants, but every public servant is not an officer of Government”—*per Best and Subramania Ayyar JJ. Orr v. Neelamsgam Pillai*, I. L. R. 18 Mad. at p. 396.

Officer of police—Defined, *Act 1, 1871*, S. 3; *Act 23, 1881*, S. 7.

Officer of the ship—Defined, *Act 6, 1898*, S. 2 (e).

Official liquidator—The words “official liquidator” as used in S. 160 of the *Indian Companies Act* (6 of 1852) “do not include the liquidator in a winding up under supervision”—*per Latham J. In re The Carwar Co. Ltd.*, I. L. R. 6 Bom. 640.

Offspring—Kindersley V. C. remarks: “When a man uses the term ‘offspring’, ‘issue’ or descendants they are vague expressions, which no doubt, on the particular context may mean ‘children’ or remote ‘descendants; but *prima facie*, it can hardly be supposed to mean ‘children’ when that simple word is so obvious a one to use. The word ‘offspring, in its proper and natural sense extending to any degree of lineal descendants, and has the same meaning as issue”—See *Young v. Davies*, 1863, 32 L. J. Ch. 373.

Omission—Defined, *Act 45, 1860*, S. 33. The word “omission” as used in S. 13, of the *Indian Oaths Act* (10 of 1873) “includes any kind of omission, and is not restricted to accidental or negligent omission”—*per Jardine and Parsons JJ. in Q. E. v. Shava*, I. L. R. 16 Bom. 359; *per Sir Richard Couch C. J., Kemp*,

Jackson, Phear and Markby *JJ*, in *Q. E. v. Seva Bhogta*, 14 *B. L. R.* 294 : *S. C.* 23 *W. R.* p. 1 (*Crl.*).

Omit to sue—The words ‘omit to sue, as used in *S.* 43 of the Civil Procedure Code, “must refer to an omission which might have been avoided, not to an omission to claim that which a party could not know he was entitled to”—*per* Collins *C. J.* and Handley *J.* in *Mariathodi v. Appu*, *I. L. R.* 15 *Mad.* at p. 297.

On demand—See the observations of Garth *C. J.* and Markby *J.* in *Ramchandrar Ghosal v. Jagat Monmohini Debee* *I. L. R.* 4 *Cal.* 283 ; “must be regarded as a technical expression equivalent to ‘immediately,’ or ‘forthwith’”—*per* Collins *C. J.* and Benson *J.* in *Perumal Ayyan v. Alagagirisami Bhagarathar* *I. L. R.* 20 *Mad.* at p. 248.

On presentment—Defined, *Act* 26, 1881 *S.* 21.

On the spot where the property is attached—As used in *S.* 289 *Civil Procedure Code* see *Tirpura Sundari v. Durgachurn Pal* *I. L. R.* 11 *Cal.* 74.

Once a mortgage always a mortgage—“The meaning of that is that the mortgagee shall not make any stipulation which will prevent a mortgagor, who has paid principal, interest and cost from getting back his property in the condition in which he parted with it”—*per* Lord Davey in *Noakes & Co., Ltd. v. Rice* [1902] *A. C.* 24 referred to by Jenkins *C. J.* in *Rajmal v. Shivaji* *I. L. R.* 27, *Bom.* at p. 156.

Only—As used in *S.* 21 of the *Limitation Act* (15 of 1877) is not to be treated as surplusage—*per* Brodhurst and Tyrrell *JJ.* in *Gadu Bibi v. Parsotam* *I. L. R.* 10, *All.* p. 418 ; see also *Premji Lindha v. Dossa Doon Gerry*, *I. L. R.* 10; *Bom.* 358.

Ootbundee land—See “Tenant.”

OR.

Open place—"The words 'open place' coupled with 'road,' 'street' or 'thoroughfare' (as used in S. 34, of Act 5, 1861, as modified by Act 8 of 1895) should not be interpreted *ejusdem generis*. It seems rather that the addition of these words was intended to have a wider signification"—per Prinsep J. in *Bapati Dewan v. Bispati Pundit I. L. R. 27 Cal. at p. 656*.

Opium—Defined Act 1, 1878, S. 3.

Opposite party—The term "opposite party" as used in S. 109 of the *Civil Procedure Code* "does not cover an auction-purchaser of property sold in execution of an *ex-parte* decree"—per Maclean, C. J. & Banerjee, J. in *Jatindra Mohan Poddar v. Srinath Roy, I. L. R. 26 Cal. 267*.

Or—Jessel M. R. observes: "You will find it said in some cases that 'or' means 'and'; but 'or' never does mean 'and'—*Morgan v. Thomas* 51 L. J. Q. B. 557; as used in S. 55 of Act 5 of 1878, *Abkari Act (Bombay)* "is equivalent to 'nor'"—per Bayley, C. J. in *Framji, Manekji, Punjaji v. the Secretary of State for India, I. L. R. 17 Bom. at p. 161*.

Or for any other reasonable cause.—As used in Cl. (f) of S. 13 of the *Legal Practitioner's Act* (18 of 1879) as amended by Act 11 of 1896 is doubtful whether applicable to any act other than professional misconduct.

Or other proceeding.—As used in S. 147 of Act 10 of 1875, see *In the matter of the petition of Charoo Chunder Mullick and others v. The Empress I. L. R. 9, Cal. 397*.

Or other thing.—As used in S. 328, *Indian Penal Code* "must be referred to the preceding words and be taken to mean "unwholesome or other thing" and not other thing simply" per Kemp and Glover JJ. in *Jotee Ghorae appellant, 1 W. R. p. 7 (Cr.)*; as used in S. 58 of the *Land Acquisition Act 1870*

OR.

do not include appeals under S. 35—*Chiragdin v. The Collector, Municipal Water Works Lahore, P. R. 1883, No. 53.*

Or otherwise.—The words "or otherwise" as used in S. 438 *Criminal Procedure Code* were never intended to give to a Magistrate the power to question the propriety of a judgment or sentence by a superior criminal authority—*per* Ghose and Hill JJ. in *Q. E. v. Karamdi I. L. R. 23 Cal. at p. 251, or which has been reported for orders*—as used in S. 439, *Criminal Procedure Code, Act 10, 1882* see *Q. E. I. L. R. 23 Cal. 257.*

Order—Defined *Act 14, 1882, S. 2; Act 11, 1886, S. 3(6).* As used in S. 629, *Civil Procedure Code* "is apparently not used in a technical sense as opposed to a 'decree,' but as a comprehensive term to express the final adjudication of the Court after the application for review has been admitted and the case reheard, and includes both the judgment and the decree."—*Benarsi Das v. Syd Sultan Mirza P. R. 1892, No. 57.* Burkitt J. observes: "It is at least doubtful whether the result of proceedings under S. 214 of the *Indian Companies Act 6 of 1882* can be considered to be an order in the strict sense of that word as defined in the *Code of Civil Procedure*"—*Reference under S. 28 of Act 7 of 1870, I. L. R. 17 All. at p. 240*—See "judgment"; "Final order."

See also *Hathibhai Nahansa v. Petal Beechar Praggji, I. L. R. 13 Bom. 371.*

Orders and Decisions—As used in S. 114 of the *N.-W. P. Land Revenue Act (19 of 1873)* see *Niaz Begam v. Abdul Kasim Khan I. L. R. 14 All. 500.*

Order made on appeal—As used in *Cl. 3 of the L. P. of 1865,* see *Raja Syd Enaet Husain v. Rani Roshan Jehan, 1 B. L. R. F. B. Rulings p. 1.*

OT.

Ordinary course of business—The expression “ordinary course of business” as used in S. 32 (2) and other sections of the *Evidence Act* “means in the ordinary course of a professional avocation. It does not mean the dealings of a private individual apart from his avocation or business”—*per* Candy and Fulton JJ. in *Ningawa v. Bharmappa* 1. L. R. 23 Bom. 63.

Ordinary jurisdiction—The term “ordinary jurisdiction” as used in S. 86 of the *Statute* 11 and 12 V. C. 21 “embraces all such as is exercised in the ordinary course of law and without any special step being necessary to assume it; and it is opposed to extra-ordinary jurisdiction which the Court may assume at its discretion upon special occasions and by special orders”—*per* Lord Hob House, *In the matter of Candas Narrondas; Navivahu v. C. A. Turner*, 1. L. R. 13 Bom. at p. 533 P. C.

Ordinarily—As used in S. 599, *Civil Procedure Code* (Act 14 1882) see *Lakshmanam v. Paryasami*, 1. L. R. 10 Mad. 273.

Other—As used in S. 13, sub-sec. (f) *Legal Practitioner's Act*, see *In the matter of Jogendra Narain Bose*, C. W. N. Vol. 5 p. 48.

Other cause of a like nature—With reference to the words “other cause of a like nature” as used in S. 14 of the *Limitation Act*, Strachey C.J. observes: “I think that the result of the authorities taken as a whole, and the view which I take of the true principle, may be summarised by saying that if there was an inability in the Court to entertain the former suit produced by any cause not connected in any way with want of good faith & due diligence in the plaintiff, that cause is of like nature to defect of jurisdiction within the meaning of S. 14 of the Act. I think that this view of the words “other cause of a like nature” corresponds most closely with the object of the Legislature in enacting the section as stated by me in the earlier part of the judgment”—*Mathura Singh v. Bhawani Singh*, All. W. N. 1900 at p. 67;

"means some cause analogous to defect of jurisdiction"—per Edge C. J. and Brodhurst J. in *Jenna v. Ahmed Ali Khan I. L. R. 12 All. 207*; see *Lachman Prasad v. Nankoo Prasad*, 17 W. R. 266.

Other effects—The words "other effects" in general "mean effects *ejusdem generis*"—per Rigby L. J. in *Anderson v. Anderson*, [1895] 1 Q. B. at p. 757 C. A.

Other good and sufficient cause—As used in Cl. 3 S. 18 of *Bengal Regulation II of 1803* see *Troup and others v. The East India Co.* 7 M. I. A. 104.

Other injury—The words "other injury" as used in S. 493 of the *Code of Civil Procedure* "do not include acts of trespass upon property"—per Knox Acting C. J. and Blair J. in *Darab Kuar v. Gomti Kuar*, All. W. N. 1900 p. 170.

Other intangible thing—The words "other intangible thing" as used in S. 53, *Transfer of Property Act* "might include a charge, (but) the expression must be construed with reference to its context and to the heading of the chapter. The chapter relates to sales of immovable property', and the context classes other intangible thing' with reversions in contradistinction to tangible immoveable property"—per Collins C. J. and Parker J. in *Suberamaniam v. Peru Mal Reddi*, I. L. R. 18 Mad. at p. 455.

Other reasonable cause—As used in S. 13 of the *Legal Practitioner's Act* 18 of 1879 see *In the matter of a pleader*, I. L. R. 26 Mad. 448.

Otherwise—As used in S. 295 of the *Code of Civil Procedure* "means other process of execution provided for by the *Civil Procedure Code*"—per Trevelyan J. in *Sew Bux Bogla v. Shib Chunder Sen*, I. L. R. 13 Cal. 225.

Otherwise than out of the property sold—As used in S. 90, *Transfer of Property Act* see *Mansab Zaman Khan v. Inayatullah*, I. L. R. 14 All. 518.

Otherwise unfit—As used in S. 6 of the *Bombay Act* 6 of 1863 see *Gell v. Taja Noora*, I. L. R. 27 Bom. at p. 318.

Our zamindary property—The words “our zamindary property” used to describe the mortgaged property in a deed of simple mortgage, are sufficiently certain and definite to create a transfer of interest in specific immoveable property” within the meaning of S. 58 of the *Transfer of Property Act*—*per* Straight J. (Brodhurst J. concurring) in *Shadi Lal v. Thakur Das*, I. L. R. 12 All. 175.

Out-house—An out-house means something annexed to the in-house—*Reg. v. Hammond*, 1 Cox, C. C. 60.

Owner—Defined, *Beng. Act* 3, 1899, S. 3 (32); *Act* 8, 1901, S. 3 (e); *Act* 2, 1902, S. 2 (f); *Act* 6, 1878, S. 3; *Act* 15, 1879, S. 2; *Act* 19, 1884, S. 2; *Act* 2, 1886, S. 24; *Act* 18, 1889, S. 3 (4); *Act* 18, 1891, S. 3 (5);—*Act* 17, 1884, S. 2.

The word ‘owner’ is ordinarily applied indiscriminately to persons having rights in property which are in some cases plenary and in others restricted—*per* Chatterji J. in *Buta v. Musammatt Jiwani*, P. R. 1898, No. 82 at p. 289; as used in *Bombay Municipal Act* 3 of 1888 see the *Municipality of Bombay v. Shapurji Dinsha*, I. L. R. 28 Bom. 617.

Owner and holder—The words “owner and holder” as used in S. 55 of *Bengal Act* 9 of 1880 “are not limited to any one person, nor for purposes of that section must the owner be in actual possession”—*per* Tottenham and Norris JJ. in *Gopal Chandar Sircar v. Adhiraj Aftab Chand*, Mahtab I. L. R. 10 Cal. 743.

PA.

Original owner.—The term "original owner" as used in *Cl. 2 of S. 4 of Regulation 11 of 1825* does not mean the person who may for a time have had possession of the accreted land without acquiring a right to the site of it, but includes the ownership of the site—*per* Sir Richard Couch *C. J.* and Jackson *J.* in *The Court of Wards v. Radha Prasad Singh*, 22 *W. R.* 238.

A Receiver appointed by *H. C.* is not an owner within the meaning of *S. 3. Cl. 32 of Beng. Act 3 of 1899*—*W. R. Fink v. The Corporation of Calcutta I. L. R.* 30 *Cal.* 721.

Owner's rate—Defined, *Act 8, 1873, S. 37.*

Pae bund—Where a decree was to the effect that "the mortgaged property shall be made liable (*pae bund*) for the realization of the decretal amount," Rampini *J.* held.—"The vernacular expression *pae bund* means 'tied by the leg or 'fettered'—that is *incumbered*." It does not seem to imply *sale*. No doubt the decree directs that the mortgaged property shall be *made* liable. But this is certainly not a clear direction that the property is to be sold,"—*Lal Behari Singh v. Habibur Rahman, I. L. R.*, 26 *Cal.* at *p.* 171.

Pahi tenant—See "*tenant*."

Paid, delivered or rendered—As used in *Cl. (2) of S. 3, of the N.-W. P. Rent Act (12, 1881)* "must be taken to refer respectively to rent paid in cash, to rent delivered in kind, and to rent rendered by appraisement, the native words for the three methods being *nakā*, *batai* and *kankut*—*per* Mahmood *J.* in *Waris Ali v. Muhammad Ismail and others, All. W. N.* 1886, at *p.* 225.

Panchayet—Defined, *Mad. Act 5, 1884, S. 3 (VI).*

Paper—Defined, *Act 2, 1899, S. 2 (18).*

Parcel or parcels—As used in *S. 3. Cl. 9 of the Bengal Tenancy Act (8 of 1885)* means "entire parcel" or "entire parcels" and

is not intended to include an undivided fractional share in a "parcel" or "parcels" of land—*Hari Charan Bose v. Raja Ranjit Singh C. W. N.* Vol. I. p. 521.

Pardanashin—Defined, *Beng. Act 1, 1876, S. 2.*

Parent—Defined, *Act 13, 1855, S. 4; Act 13, 1880, S. 2.* The word *parents* used in the order of succession as laid down in the *Mitakshra* includes father and mother—*Vinayak Ananrav v. Lakshmi Bai, 1 M. H. C. R.* at p. 118.

Pargana—"An administrative division of territory under Mughal Empire, and thence-forward, being a sub-division of a district, and containing a varying number of villages."—*Baden Powell's Land Systems of British India, Index and Glossary.*

Part—Defined *Act 10, 1897, S. 3(38); Act 2, 1886, S. 3.*

Parties—As used in *S. 24* of the *Bengal Civil Court Act* does not mean the parties to an action, but must be interpreted with reference to the inception of the right to be adjudicated upon—*per Mahmood J. in Gobind Dayal v. Inayatullah, I. L. R. 7, All. 775*; as used in *S. 30 Civil Procedure Code (Act 10 of 1877)* means "persons."—*The Oriental Bank Corporation v. Gobind Lal Seal, I. L. R. 9 Cal.* at p. 606.

Parties concerned.—The words "parties concerned" as used in *145 Criminal Procedure Code (Act 10, 1882)* do not necessarily mean only the persons who are disputing, but include also persons who are interested in or claiming a right to the property in dispute—*per Trevelyan and Rampini JJ. in Ramchandra Das v. Manchar Roy, I. L. R. 21, Cal. 29*; *per Stanley J. in Laldhan Singh v. Sukhdeo Narain Singh I. L. R. 27, Cal.* at p. 904; are intended to indicate all persons claiming to be in possession at the time of the initial orders under *Cl. (1) S. 145*—*per Prinsep Offg. C. J. Banerjee, Hill, Brett and Hender-*

son *JJ.* in *Krishna Kamini v. Abdul Jabbar*, *I. L. R.* 30 *Cal.* 155F. B; see *Bechu Sheikh v. Deb Kumari Dassi*, *I. L. R.* 21 *Cal.* at p. 410 and 417.

Parties to the suit.—"The interpretation of the term 'parties to the suit' as used in *Cl. (C)* of *S. 244* of the *Code of Civil Procedure* depends upon the nature of the question arising under that clause. If, for example, a judgment-debtor makes the claim or objection on behalf of third parties who are not represented before the court the question raised cannot be said to be a question arising between the *parties to the suit* within the meaning of *S. 244*. If however the judgment-debtor puts in the claim either on his own account, under whatever right, or as the representative of third parties in which representative capacity he has been sued, the question is properly one between the *parties to the suit* under *S. 244*"—*per* Norris and Beverley *JJ.* in *Rup Lal Das v. Beakani Meah* *I. L. R.* 15 *Cal.* at p. 442. See *Nagamuthu v. Sivaramuthu*, *I. L. R.* 15 *Mad.* 226; *Collector of Trichnopoly v. Sivaramakrishna Sustrigal*, *I. L. R.* 23, *Mad.* 73; *Ramaswami Sustralu v. Rameswamma*, *I. L. R.* 23 *Mad.* 361; *Rahimuddi Sirkar v. Loll Meah*, *I. L. R.* 29 *Cal.* 696; refers to *defacto* parties admitted as such on the record and does not include persons who claim to be but are not admitted in the record to be parties—*Nihal Singh v. Chet Singh*, *P. R.* 1887, No. 97.

Parties under whom they or any of them claim.—See *Sham Sunder and others v. Bhairon Pal and others*, *P. R.* 1894, No 51.

Partition—There are two fold application of the word "partition" viz, a division of right in a joint property or the division of property itself by metes and bounds—*Narayan Balaji v. Pan-*

PA.

durang Ramchandra, 12, B. H. C. R. at p. 155. As used in S. 265, *Civil Procedure Code* "is not confined to mere division of the lands in question into the requisite parts, but includes the delivery of the shares to their respective allottees"—per Sargent C. J. in *Parbhudas Lakshmidas v. Shankarabhai*, I. L. R. 11 Bom. at p. 662.

Partnership—Defined, Act 9, 1872, S. 239.

Partnership, "is a contract of some kind, undoubtedly a contract like all contracts, involving the mutual consent of the parties"—per Jessel M R. in *Pooley v. Driver* 5 Ch. D. at p. 472.

As used in the first proviso of S. 6 of Act 11 of 1865 refers to a relation which subsists between persons as defined in S. 239 of the *Contract Act* (9 of 1872)—*Asman Singh v. Durga Roy*, 7 C. L. R. 94. See "Company",

Party—"Any person served with notice of or attending any proceeding although not named on the record"—*Judicature Act* 1878 (36 and 37 V. C. 66) S. 100. As used in S. 64 *Contract Act* (9 of 1872) see "person".

Party to a judicial Proceeding—The expression "party &c." As used in S. 8 of the *Indian Oaths Act* (10 of 1873) does not include either the complainant or the accused in a criminal case—per Scott and Parsons JJ. in *Q. E. v. Murarji Gokul Das*, I. L. R. 13, Bom. 389.

Party wall—Defined *Beng. Act* 3, 1899 S. 3 (33).

Pass—Defined, Act 9, 1890, S. 3 (15).

Patel—Defined, Act 18, 1881, S. 4.

Patta—A patta (or pottah) is a generic term, embracing every kind of engagement between a zemindar and his tenant or ryots—*Babu Dhanpat Singh v. Gooman Singh and others* 11, M. I. A. 433.

"Looking to the language of the *Registration Act* (3 of 1877) the term 'patta' appears to be included in the term 'lease'"—
per Turner C. J. and Innes J. in *Venkatta Chellam Chetti v. Audian I. L. R. 3 Mad. at p 359.*

Patti—Defined, *Act 1881, S. 4*

Patti of a mahal—The term "patti of a mahal" as used in S. 188 of the *N. W. P. Land Revenue Act* (19 of 1873) means the division of a mahal distinct from the share of an individual co-sharer—*Bajnath v. Sital Singh I. L. R. 13 All. 224.*

Pattidari—"Many joint villages are found in a state of division or severality as regards the cultivation and enjoyment of the land. This may have existed only since a few years, or it may have been so from time immemorial. Ordinarily, when the family is descended from some single village 'founder' the shares will be mainly those of the ancestral tree, and follow the law of inheritance. A sharer here and there may be holding a few (or many) acres more or less than his share; but the general scheme is easily traced and is acknowledged by the co-sharers. When this is the case the village is said to be *Pattidari* because the primary division, representing the main branches of the family are called *Patti*. It will be borne in mind that *Pattidari* properly means not only a village held in severality, but also held in shares which are wholly (or at least in part) ancestral i.e., those of law of inheritance—*Baden Powell's Land System of British India Vol. I, p. 159.*

Pauper—Defined, *Act 14 of 1882, S. 401, Explanation.*

Pauper leper—Defined, *Act 3, 1898 S. 2 (2).*

Pay—Defined *Act 17, 1887, S. 3 (5); Act 9, 1883, S. 3; Act 8, 1885, S. 3, Act 9, 1898, S. 2. (7); Act 16, 1887, S. 4 (2).*

Payable—Defined, *Act 9, 1883, S. 3; Act 8, 1885, S. 3.*

As used in S. 12 of *Act 23 of 1871 (Pensions Act)* means deliverable in performance of an obligation, in other words that

actual payment was demandable by the person entitled—*Sridevi v. Krishnan*, *I. L. R.* 21 *Mad.* at p. 108 (*per* Subramania Ayyar and Davies JJ).

Payee—Defined, *Act* 26, 1884, *S.* 7.

Payment—Defined, *Act* 9, 1883, *S.* 3; *Act* 8, 1885, *S.* 3.

As used in *S.* 258 *Civil Procedure Code* “may mean either the act of paying money or the act and its result, the satisfaction of an obligation; the term adjustment is susceptible only of one meaning, an act and the result”—*per* Turner C. J. in *Mallamma v. Venkappa*, *I. L. R.* 8 *Mad.* at p. 282.

Payment in due course—Defined, *Act* 26, 1884, *S.* 10.

Penal—“In its ordinary acceptation the word ‘penal’ may embrace penalties for infractions of general law which do not constitute offences against the State; it may for many legal purposes be applied with perfect propriety to penalties created by contract” “When employed without any qualification express or implied, are calculated to mislead, because they are capable of being construed so as to extend the rule to all proceedings for the recovery of penalties whether exigible by the State in the interest of the community or by private persons in their own interest”—*per* Lord Watson in *Huntington v. Attril*, [1893] *App. Cas.* at p. 156.

Penalty—As contemplated by *S.* 4 of the *Contract Act Amendment Act* 6 of 1899 see *Sankaranarayana Vadhyar v. Sankaranarayana Ayyar*, *I. L. R.* 25 *Mad.* 343; *Bansidhar v. Bu Ali Khan*, *I. L. R.* 3 *All.* 260.

Pending—“A cause is said to be pending in a Court of Justice when any proceeding can be taken in it. That is the test. If you can take any proceeding it is pending, ‘Pending’ does not

mean that it has not been tried. It may have been tried years ago. In fact in the days of the old Court of Chancery, we were familiar with cases which had been tried fifty or even one hundred years before, and which were still pending"—*per* Jessel *M. R.* *In re Clagett's Estate. Fordham v. Clagett*, 20 *Ch. D.* 637 at *p.* 653.

Pension—The word "pension" "is derived from *pensao* of the Portuguese corresponding, I suppose, with the word *pensio* which denoted in Middle Ages a settled sum paid for land"—Sir Perry in *Doed E. I. Co. v. Hirabai*, Perry's Oriental cases at *p.* 487.

Permanent settlement—See "Settlement".

Permit—As used in *Cl.* (1) of *S.* 6 of *Act* 11 of 1890 "implies knowledge of that which is permitted"—*per* Blair *J.* in *Q. E. v. Lalta Prasad*, *I. L. R.* 20 *All.* 86.

Person—Defined, *Act* 10, 1897, *S.* 3. (39); *Act* 3, 1855, *S.* 4; *Act* 13, 1856, *S.* 2; *Act* 24, 1859, *S.* 1; *Act* 45, 1860, *S.* 11; *Act* 17, 1864, *S.* 1; *Act* 3, 1865, *S.* 2; *Act* 10, 1865, *S.* 3; *Act* 27, 1866, *S.* 2; *Act* 1, 1868, *S.* 1; *Act* 2, 1886, *S.* 3.

"There can be no question that the word 'person' may and I should be disposed myself to say *prima facie*, in a public Statute, includes a person in law: that is a corporation, as well as a natural person. But although that is a sense which the word will bear in law, and which, as I said, perhaps ought to be attributed to it in the construction of a Statute unless there should be any reason for a contrary construction, it is never to be forgotten, that in its popular sense and ordinary use it does not extend so far. Statutes like other documents, are constantly conceived according to the popular use of language; and it is certain, that this word is often used in Statutes in a sense in which it can not be intended to extend to a corporation"—*per*

Lord Selbourne *L. C.* in *Pharmaceutical Society v. London and Provincial Supply Association*, 5 App. Cas. at pp. 861, 862.

As used in *S. 115* of the *Evidence Act* (1 of 1872) "applies only to a person of full age and competent to enter into a contract. The word 'person' and 'party' in *S. 64* of the *Contract Act* (9 of 1872) are interchangeable and means such a person as is referred to in *S. 11* of that Act that is, a person competent to contract—per Maclean *C. J.*, Prinsep and Amir Ali *JJ.* in *Brohomo Dutt v. Dharmo Das Ghose*, *I. L. R.* 26 Cal. 381; as used in *S. 62* *Madras Towns Improvement Act* 1871 "includes any company or association or body of persons, whether incorporated or not unless such a construction would be repugnant to the context"—per Turner *C. J.* in *The Municipal Commissioners of Negapatam v. Sadaya Pillai*, *I. L. R.* 7 Mad. 74; the Court of Wards is not a 'person' within the meaning of *Probate and Administration Act*—per Trevelyan and Banerjee *JJ.* in *Gangessar Kuar v. The Collector of Patna*, *I. L. R.* 25 Cal. 795; as used in *S. 87* of the *Calcutta Municipal Consolidation Act* 2 of 1888 does not include joint-stock—per Petheram *C. J.* and Beverley *J.* in *Corporation of Calcutta v. Standard Marine Insurance Co.* *I. L. R.* 22 Cal. at p. 586; as used in *S. 311*, *Act* 10 of 1877 see *Bhagbati Charan Bhattacharji v. Kali Kumar*, 10 *C. L. R.* 441; as used in *S. 37*, *Act* 8 of 1869, see *Ishan Chander Roy v. Busar-ud-din*, 5 *C. L. R.* 132; as used in *S. 3* of *Act* 5 of 1843 applies to any person who has at any time been a slave—Syed Mir Ujm-ud-din Khan v. Ziab-un-nissa Begam, 5 *C. L. R.* 11; as used in *S. 61* of the *Stamp Act* (1 of 1879) "includes members of a trading partnership—per Prinsep and Hill *JJ.* in *Q. E. v. Khetar Mohan Choudhari*, *I. L. R.* 27 Cal. 333; as mentioned in *art. 127*, *Sch. II*, *Limitation Act* (15 of 1877) means some person claiming a right to share in joint family property, upon the ground that he is a member of the family

to which the property belongs—*per* Tottenham and Ghose JJ. in *Kartick Chunder Ghuttick v. Sarda Sundari Debi*, 1. L. R. 18 Cal. 642.

The word “persons” in the first clause of S. 396, *Civil Procedure Code* “means ‘more persons than one’, and not ‘one or more persons’”—*per* Plowden J. in *Kashi Nath v. Bulaki Das*, P. R. 1893, No. 124.

Person aggrieved—Any person who makes an application to a Court for a decision, or any person who is brought before a Court to submit to a decision, is, if the decision goes against him thereby a ‘person aggrieved’ by that decision”—*per* Lord Esher M. R., in *Re Lamb Ex Parte Board of Trade*, [1894], 2 Q. B. at p. 12, C. A. The brother of a lunatic whose wife may be charged with having committed bigamy is not a “person aggrieved” within the meaning of S. 198 of the *Indian Penal Code*—*per* Birdwood and Jardine JJ. in *Q. E. v. Bai Rukshomoni*, 1. L. R. 10 Bom. at p. 341; but the husband is—*The Deputy Legal Rememberancer v. Sarna Kahmi*, 1. L. R. 26 Cal. 336.

Person in authority—As used in S. 24 of the *Evidence Act* see *Thandraya Mudaly v. Empercr*, 1. L. R. 26 Mad. 38.

Person interested—*Act* 10, 1870, S. 3; *Act* 7, 1903, S. 2 (b); *Act* 1, 1894, S. 3 (b).

Person interested in the property—As used in sub-section (4) of S. 50 of the *Probate and Administration Act* (5 of 1881) “must mean any person interested in the property independently of the executor whose alienation he seeks to avoid”—*per* Banerjee and Gordon JJ. in *Jagobandhu Dey Poddar v. Dwarka Nath Addya*, 1. L. R. 23 Cal. 446 at p. 450.

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Person last entitled—Defined Act 30, 1839, S. 1.

Person making the same—As used in S. 20 Limitation Act see *Mukhi Haji Rahmut-ullah v. Covesji Bhujia*, I. L. R. 23 Cal. at p. 552.

Person of European Extraction—Defined Act 9, 1874, S. 3.

Person of unsound mind—Defined Act 27, 1866, S. 2.

Person professing the Christian religion—The words "person who profess the Christian religion" as used in Act 15 of 1872 "mean in our opinion not only adults who profess that religion, but also their children, who are in law presumed to follow their father's religion—*per Muttusami Ayyar and Best JJ.* in *Q. E. v. Vesradu*, I. L. R. 13 Mad. at p. 232.

Person referred to—As used in S. 2 of Act 10 of 1877, See *Maharaja of Benares v. Debi Dayal Nonia*, I. L. R. 3 All. 575.

Person subject to this Act—Defined Act 14, 1887, S. 2 (a).

Persons living or carrying on business in the neighbourhood—As used in S. 133 of the Indian Penal Code see *Q. E. v. Jasodanand*, I. L. R. 20 All. 501.

Person whose property has been sold.—As used in S. 311, Civil Procedure Code see *Rakhal Chandra Bose v. Dwarkanath Misser* I. L. R. 13 Cal. 364; *Asmatunnissa Begam v. Ashraf Ali*, I. L. R. 15 Cal. 483. An attaching creditor is not a "person whose immovable property is sold"—*per Rampini and Wilkins JJ.* in *Matingini Dassi v. Monmotha Nath Bose*, 4 C. W. N. 542. *Bisheshar Kuar v. Hari Singh*, I. L. R. 5, All. 42; *Timmanna Bauta v. Mahabala Bhatta* I. L. R. 19 Mad. 167; as used in S. 310A., Civil Procedure Code is used in the same sense as in S. 311.—*Ramchandra v. Rukhma Bai*, I. L. R. 23 Bom. at p. 451.

Person within the jurisdiction of the Court.—As used in S. 151 of the *Army Act* of 1881 see *R. Norton v. Major T. Nicholls*, P. R. 1887, No. 111; *E. Gillon & Co., v. Lieutenant H. A. P. White*, P. R. 1893, No. 1.

Personal Decree—The decree which provides for the recovery of the balance after the sale of the hypothecated property is personal in the sense that it is not a decree which directs that the amount decreed is to be realized by the sale of specific property. Under such a decree any property of the judgment-debtor may be attached and sold—*per* Burkitt and Henderson JJ. in *Hari Ram v. Bishnath Singh*, All. W. N. 1900 p. 158.

Personal injury—See *Phoolasi Kuor v. Purjun Singh*, 121 W. R. at p. 369.

Personal property—The term “personal property” as used in S. 6, Act 11 of 1865 means “movable property”—*Raj Chunder Bose v. Dharmo Chunder Bose*, 10 W. R. 416; see *Nathu Miah v. Nand Rani* 8 B. L. R. at p. 517.

Personally interested—As used in S. 555 *Criminal Procedure Code* “cannot mean that a public officer whose duty it is to see that the law is obeyed is merely by reason of that duty, a person personally interested in the prosecution and trial of an offender against the statute law. The words ‘personally interested’ cannot refer to any very remote interest in the matter, and must refer to some particular and immediate personal interest in the case and its results”—*per* Sir John Edge C. J. in the matter of the petition of *Ganeshi I. L R 15 All. at pp. 193, 194*; “it is not a mere interest in a case or in the circumstances of a case which disqualifies a Magistrate or a Judge from trying a case. That which disqualifies him is, to adopt the language used in the case of the *Queen v. Haudsley* (8 Q. B. D. 33) ‘a substantial interest giving rise to a real bias and not merely to a possibility of bias’”

per Knox *J.*, *ibi* at p. 195; "I should be inclined to say that it was an interest attaching to him as an individual"—*per* Aikman *J.* *ibi*. p. 196; "does not mean merely 'privately' interested but might include a case where the Magistrate had initiated and directed the whole proceedings"—*per* Trevelyan and Rampini *JJ.* in *Girish Chunder Ghose v. Empress I. L. R.* 20 Cal. 57.

Rivaz and Channing *JJ.* take the same view as the Calcutta High Court—see *Puran Mal v. Q. E.*, *P. R.* 1895 No. 3 *Crl.*

See *Q. E. v. Sahdeo*, *I. L. R.* 14 *Bom.* 572.

Personally working for gain—As used in *Cl. 12* of *L. P.* of 1865 see *Goswami Sri Girdharji Maharaj v. Shri Gobardhanlalji*, *I. L. R.* 18, *Bom.* 290.

Petroleum—Defined, *Act 7* of 1898, *S.* 2(1); *Act 8*, 1899, *S.* 2(a); *Act 12*, 1886, *S.* 3(1).

Petty Officer—Defined, *Act 1*, 1899, *S.* 3(d); *Act 14*, 1887, *S.* 2(d).

Physical possession—With reference to the words "physical possession" as used in *Art. 10, Sch. II.* of the *Limitation Act*, Lord Robertson while delivering the judgment of their Lordships of the Privy Council in *Batul Begam v. Mansur Ali* (*I. L. R.* 24 *All.* at p. 25) thus observes: "The word 'physical' is of itself a strong word, highly restrictive of the kind of possession indicated; and when it is found, as is pointed out by the High Court, that the Legislature has in successive enactments about the limitation of such suits gone on strengthening the language used,—first in 1859 prescribing possession, then in 1871 requiring 'actual possession,' and finally in 1877 substituting the word 'physical' for 'actual,' it is seen that the word has been very deliberately chosen and for a restrictive purpose..... Their Lordships consider that the expression used by Stewart *C. J.* in regard to the words 'actual possession' (in *Jageshar Singh v.*

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Jwahir Singh, I. L. R. 1 All. at p. 313, see "actual possession") is applicable with still more certainty to the words 'physical possession' and that what is meant is a *physical and immediate possession*;" "do not include the idea of constructive possession but correspond to "tangible possession"—*Kalan Khan v. Ram-saran Das, P. R. 1880 No. 97.*

Piety and charity—The words "piety and charity" "have much wider signification in *Mahammadan Law* and religion than perhaps in any others"—*per Amir Ali J. in Mir Muhammad Israil Khan v. Seshticharan Ghose, I. L. R. 9; Cal. at p. 427.*

Pilgrim—Defined, *Act 14, 1895, S. 5(1).*

Pilgrim of the lower class—Defined, *Act 14, 1895, S. 5, Explanation.*

Pilgrimage—Defined, *Act 14, 1895, S. 5(2).*

Pilot—Defined, *Act 15, 1879, S. 2.*

Place—Defined, *Act 12; 1896, S. 1(f); Act 22, 1881, S. 3; Act 5, 1895, S. 4(1) (g).*

The building such as a Hindu temple does not fall under the designation of 'place' as used in *S. 13, Act 3, 1867 (Gaming and Wagering)*—*per Plowden J. in Ghaddu v. The Empress, P. R. 1882, No. 13, (Crl.)*; as used in *S. 99 of the Mutiny Act* is not used in a limited sense namely that a place must have limits—*per Sir Barnes Peacock C. J. and Hob House J. in Hosseinee Khidmatgar v. Lieutenant Dickinson, 99 W. R. 112*; as used in *S. 39 of Rent Recovery Act (Madras Act 8 of 1865)* denotes some place in the neighbourhood of the land in respect of which the patta was tendered and does not apply when the tenant resides in a foreign territory—*per Collins C. J. and Parker J. in Oliver v. Anantharamayyam, I. L. R. 18, Mad. 30*; as used in *Cl. 10 of S. 3, of Act 3 of 1889 (Madras Towns Nuisances Act)* see *Q. E.*

v. Jagannayakulu I. L. R. 18, Mad. 46; as defined in *S. 3 of Bombay Act 6 of 1873* does not include a house or *ota* of a house—*In re the petition of Raja Pulia Khoji I. L. R. 9 Bom. 272*, (*per Nanabhai Haridas and Wedderburn JJ.*)

Plaintiff—The word plaintiff in *S. 103 Civil Procedure Code* includes his heirs and representatives—*Mamraj and others v. Chandwa Mal P. R. 1891, No. 117.*

Plan—Defined, *Act 3, 1903, S. 2 (m).*

Platform—Defined, *Act 3, 1899, S. 3 (34).*

Plead and act—As used in *S. 11 Act 20, 1865*, see *in the matter of Ishur Kant Bhadooree, 27 W. R. 233.*

Pleader—Defined, *Act 5, 1898, S. 4(1) (r)*; *Act 14, 1882, S. 2*; as used in the *Criminal Procedure Code*, see *Abbas Peada v. Q. E. 2, C. W. N. 484.*

Police—Defined, *Act 24, 1859, S. 1.*

Police-daroga—Defined, *Act 20, 1856, S. 61.*

Police Officer—As used in *S. 26, Evidence Act* “includes the police officers of Native States as well as that of British India”—*per Strachey and Fulton JJ. in Q. E. v. Nagla Kala, I. L. R. 22, Bom. 235*; as used in *S. 26 of the Abkari Act (Madras Act 3 of 1884)* includes a *mohatad* or village police-man—*per Muttusami Ayyar and Hutchins JJ. in Brahayan Nayak v. Krishna, I. L. R. 9, Mad. 97*; a village *chaukidar* is not a police officer within the meaning of *S. 59 of the Code of Criminal Procedure*—*per Prinsep and Stanley JJ. in Kalai v. Kalu Chaukidar, I. L. R. 27 Cal. 366*; “in construing *S. 25 of the Evidence Act* the term (police officer) is not to be used in a technical sense, but in its more comprehensive and popular meaning”—*per Garth C. J. in Queen v. Harribole Chunder, I. L. R. 1, Cal. 207*; *Q. E. v. Bhimma I. L. R. 17, Bom. at p. 486.*

Police report—See *King Emperor v. Sada* I. L. R. 26, Bom. 150.

Police station—Defined, *Act 5, 1898, S. 4(1) (s)*.

Policy of insurance—Defined, *Act 2, 1899, S. 2 (19)*,; see *Reference Board of Revenue, I. L. R. 30 Cal. 565*.

Policy of sea insurance—Defined, *Act 2, 1899, S. 2 (20)*.

Political Agent—Defined, *Act 10, 1897, S. 3 (40)*; *Act 21, 1879, S. 2*.

Port—Defined, *Act 15, 1879, S. 2*.

Portion—As used in *S. 28 of Act 3 of 1871 (Registration)* "does not mean a substantial portion"—*Hari Ram v. Sheo Dayal Mal, I. L. R. 11 All. 136 P. C*; per Tyrrell and Mahmood JJ. in *Gulzari Lal v. Daya Ram, I. L. R. 9, All. 11*.

Portion of a share.—As used in *S. 128 of the Partition Act [8 (B. C.) of 1876]* is wide enough to include a co-owner's share in any definite plots of land included in a joint estate being as much a portion of a share as an aliquot part of a share is—per Maclean, C. J. and Banerji J. in *Srimutty Joy Gupta v. Bharat Chandra Bardhan and others, 3 C. W. N. 209*.

Possessed of immoveable property—A person entitled under a will to a beneficial interest in a part of the surplus income derived from immoveable property does not become thereby "possessed of immoveable property".—*In the goods of Prem Chand Munshi, I. L. R. 21, Cal. 832*.

Possession—Defined, *Act 2, 1876, S. 3*.

As used in *S. 378 of the Indian Penal Code*, is not used in the sense of a constructive possession such as is implied in the right of a person having the fishery right in a public river—per Norris and Ghose JJ. in *Bhagiram Dome, v. Abar Dome*

I. L. R. 15, *Cal* 388; *per* Norris and Ghose, *JJ.* in *Maya Ram Surma v. Nichala Kutani*, *Ibi* p. 402.

The bare custody of goods by a servant does not amount to such a possession as is implied by that word in *S.* 173 of the *Indian Contract Act* (9 of 1872)—*per* Garth C. J. in *Biddomoye Debee v. Sitta Ram* and *Biddomoye Debee v. Soobul Das Mullik* *I. L. R.* 4, *Cal.* at p 499.

The possession contemplated by section 9 of the *Specific Relief Act* (1 of 1877) is the actual physical possession of the property and a mere discontinuance of the payment of rent by tenants is not dispossession within the meaning of that section—*per* Petheram C. J. and Ghose J. in *Tarni Mohan Muzoomdar v. Ganga Prasad Chuckerbutty* *I. L. R.* 14, *Cal.* 649.

As used in the *Transfer of Property Act* "is not to be restricted merely to actual physical possession but should be understood to mean such possession as the nature of the property is susceptible of"—*per* Mahmood J. in *Matadin Kasaudhan v. Kazim Husain*, *I. L. R.* 13, *All.* at p. 473.

As to what amounts to possession within the meaning of ss. 19(r) and 25 of *Act* 11 of 1878, of the Members of a joint Hindu Family see *Q. E. v. Sangam Lal*, *I. L. R.* 15, *All.* 129.

As referred to in the second paragraph of *S.* 145 *Criminal Procedure Code* "means actual possession at the time the proceedings were instituted"—*per* Chatterji J. in *Q. E. v. Gauhar Khan* *P. R.* 1897, No. 5 (*Crl.*)

Possession with wasilat—When a decree is for "possession with wasilat" the reasonable construction thereof is that wasilat is given thereby up to the date of the delivery of possession, and not merely up to the date of suit, notwithstanding that in the

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schedule to the plaint wasilat is estimated according to the amount thereof then due—*Fakharuddin Muhammad Ahsan Chaudhary v. Official Trustee of Bengal* 8, I. A. p. 197 S. C. I. L. R. 8, Cal. at p. 90.

Possessory award—As used in Act 13 of 1848, see *Nawab Jafree Begam v. Aman Singh*, S. D. A. 1861 (Jan. to June).

Post—Defined, Act 13, 1885, S. 3.

Post Master General—Defined, Act 6, 1898, S. 2(j).

Post office—Defined, Act 6, 1898 S. 2(h),

Postage—Defined, Act 6, 1898, S. 2(f).

Postage stamp—Defined, Act 6, 1898, S. 2(g).

Postal article—Defined, Act 6, 1898, S. 2(i).

Power—"By the word *power* when applied to a Court of Justice we understand an authority expressly or impliedly conferred on the Court by law to do that which without such sanction it could not have done: consent cannot give jurisdiction"—"A power may be purely ministerial; it may be exercisable only in certain events by the person authorized to exercise; he may by the terms of the sanction conferring it on him be restrained from exercising it of his own motion; it may not the less properly be termed a power"———*Chiranji Lal and another v. Jamna Das*, 7 N. W. P. H. C. R. (1874-75) pp. 246 247 F. B. Not synonymous with jurisdiction—*per Phear J. in Kali Krishna Chandra v. Harihar Chuckerbutty* 1 B. L. R. at p. 157.

Power of attorney—Defined, Act 2, 1899, S. 1 (21).

Practice—The words "practice" and "procedure" in their larger sense denote "the mode of proceeding by which a legal right is enforced, as distinguished from the law which gives or defines

the right, and which by means of the proceeding the Court is to administer the machinery as distinguished from its product—*per Lush L. J.* in *Poyser v. Minors*, *L. R. 7 Q. B. D. 329, 333*.

As used in *S. 652 Civil Procedure Code* See *Rajam Chetti v. Sheshayya*, *I. L. R. 18 Mad. at p. 247*.

Practice as a mukhtar—As used in *S. 13 of Act 20 of 1865*. see *Kali Kumar Roy v. Nobin Chunder Chukerbutty*, *7 C. L. R. at p. 564*.

Pradhan—Title of headman in certain villages in Bengal—*Baden Powell's Land System of British India, Index and Glossory*.

Predecessor in interest—The words "predecessor in interest" used with reference to a tenure-holder under the Bengal Tenancy Act (8 of 1885) include a person from whom the holder for the time being derives his title as well by purchase, gift, or will as by inheritance—*Musammat Dulhin Gulab Kuori v. Bulla Kurmi*, *2 C. W. N. 584*.

Premises—As used in *S. 248 of Bombay Municipal Act (3 of 1888)* See *The Municipality of Bombay v. Shapoorji Dinshaw*, *I. L. R. 20 Bom. 617*.

Premium—See *Reference by the Financial Commissioner of Punjab*, *P. R. 1882, No 102*.

Prescribed—Defined, *Act 14, 1895, S. 5 (6)*; *Act 12, 1894, S. 4 (2)*; *Act 8, 1899, S. 2 (e)*; *Act 8, 1901, S. 3 (f)*; *Act 14, 1883, S. 2*; *Act 15, 1883, S. 2*; *Act 2, 1886, S. 3*; *Act 11, 1886, S. 3 (15)*; *Act 13, 1886, S. 3 (2)*; *Act 22, 1886, S. 3 (13)*; *Act 18, 1889, S. 3 (5)*; *Act 8, 1890, S. 4 (8)*; *Act 8, 1885, S. 3*; *Act 14, 1887, S. 2 (j)*.

As used in *S. 2, Act 3 of 1884 (Bengal Municipal Act)* means "duly" or "lawfully prescribed"—*Beni Madhab Nag v. Moti Lal Das*, *I. L. R. 21 Cal. at p. 840*.

Prescribed day—Defined, *Act 20, 1883, S. 3.*

Prescribed period—As used in *S. 20*, of the *Limitation Act* mean n t the period prescribed for the payment of the debt, but the prescribed ^{period} of limitation—*Ramsebak v. Ram Lal Koondoo*, 8, *C. L. R.* 45⁸; the period prescribed by the *Act*—*Venkataratnama v. Kamayya*, *I. L. R.* 11 *Mad.* 218.

Presented—As used in 419 *Criminal Procedure Code* means delivered to the proper officer of the Court either by the appellant or his pleader—per *Davies* [and *Boddam JJ.* in *Q. E. v. Vasudevayya*, *I. L. R.* 19 *Mad.* at p. 355; *Q. E. v. Arlappa and Others*, *I L R.* 15 *Mad.* 137; as used in the *Limitation Act* means presented in the manner prescribed in *S. 541 Civil Procedure Code*—per *Okinnealy* and *Trevelyan JJ.* in *Akshey Kumar Nundy v. Chunder Mohan*, *I. L. R.* 16 *Cal.* 250.

Presidency—Defined, *Act 45, 1860, S. 17.*

Presidency town—Defined, *Act 10, 1897, S. 3(41); Act 2, 1874, S. 3,*

“The first settlements (of East India Company)—at *Surat* (*A. D.* 1613), on the *Coromondel Coast* at *Fort St George* (*A. D.* 1640), and at *Fort William* in *Bengal* (*A. D.* 1698) were mere factories for trading purposes. These factories then became ‘settlements,’ which were governed internally each by ‘President and Board’. In the course of time, out-stations or dependant factories grew up under the shelter of the parent, and then the original factory was spoken of as the *Presidency town* or centre of the territory where the President resided. In this way what we now call the three *Presidencies*, *Bengal*, *Madras* and *Bombay* came into existence”—*Baden-Powell's Land System of British India*, *Vol. I p.* 31.

Presidency of Bengal—Defined *Act 2, 1874, S. 3.*

Presidency of Bombay—Defined *Act 2, 1874, S. 3; Act 11, 1876 S. 3.*

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Presidency of Madras—Defined *Act 2, 1874, S. 3.*

Presidency of Fort St George—Defined *Act 11, 1876, S. 3.*

Pre-idency of Fort William—Defined *Act 11, 1876, S. 3.*

Prevailing rate—The term “prevailing rate” as used in *S. 17, Act 10 of 1859* means the rate paid by the majority of the ryots in the neighbourhood—*Shudhoo Singh v. Rumanoop Lal, 9 W. R. 83*; as used in *S. 30, Cl (a) of the Bengal Tenancy Act (8 of 185)* see *Shital Mondal v. Prosonnomoyi Debya I. L. R. 21 Cal. p. 986.*

Previous conviction for a like offence—As used in *S. 74 of Bengal Excise Act (Beng. Act 7 of 1878)* see *Ramchander Shaw v. Emperor, I. L. R. 6 Cal. 575.*

Priest—Defined, *Act 15, 1865, S. 2.*

Prime mover—Defined, *Act 18, 1882, S. 2.*

Principal officer—Defined, *Act 2, 1886, S. 3.*

Prison—Defined, *Act 3, 1900, S. 2 (b); Act 9, 1894, S. 3 (1); Act 26, 1870, S. 3.*

Private documents—Defined, *Act 1, 1872, S. 75.*

Private estates under Government management—Defined. *Act 10, 1892, S. 2 (8).*

Private markets—Butcher's shops are not private markets within the meaning of *Madras District Municipalities Act (4 of 1884)*—*per Collins C. J. and Parker J. in Q. E. v. Baodur Bhai, I. L. R. 10 Mad. 216.*

Private rights—Private rights “spoken of in *S. 431, Cl. (b) of the Code of Civil Procedure* do not mean individual rights as opposed to those of the body politic or State but those private

rights of the State which must be enforced in a Court of Justice, as distinguished from its political or territorial rights, which must from their very nature be made the subject of arrangement between one State and another. They are rights which may be enforced by a foreign State against private individuals as distinguished from rights which one State in its political capacity may have as against another State in its political capacity"—per Garth C. J. in *Hajon Manick v. Bur Singh*, I. L. R. 12 Cal. at p. 24; *His Highness Bikrama Singh, Raja of Furidkot v. Sirdar Bir Singh*, P. R. 1861, No. 191.

Private street—Defined, Act 3, 1899, S. 3 (35).

Private water—Defined, Act 4, 1897, S. 3 (3).

Privileged communication—"A privileged communication is one made on a privileged occasion, and fairly warranted by it, and not proved to have been made maliciously. A privileged occasion is one which is held in point of law to rebut the legal implication of malice which would otherwise be made for the utterance of untrue defamatory language"—per Lindley L. J. in *Stuart v. Bell*, [1891] 2 Q. B. 341 at p. 345. Lord Halsbury L. C. thus observes: I think the broad propositions may be very simply stated: for the perfect administrations of Justice, and for the protection of the confidence which exists between a solicitor and his client, it has been established as a principle of public policy that those confidential communications shall not be subject to production. But to that, of course, this limitation has been put, and justly put, that no Court can be called upon to protect communications which are in themselves parts of a criminal or unlawful proceeding. Those are the two principles, and of course it would be possible to make both propositions absurd, as is very often the case with all propositions, by taking extreme cases on either side. If you are to say, 'I will not say what these com-

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munications are because until you have actually proved me guilty of a crime, they may be privileged as confidential', the result would be that they could never be produced at all, because until the whole thing is over you cannot have the proof of guilt. On the other hand if it is sufficient for the party demanding the production to say; as a mere surmise or conjecture, that the thing which he is so endeavouring to inquire into may have been illegal or not, the privilege in all cases disappears at once. The line which the Courts have hitherto taken, and I hope will preserve is this—that in order to displace the *prima facie* right of silence by a witness who has been put in the relation of professional confidence with his client, before that confidence can be broken you must have some definite charge either by way of allegation or affidavit or what not. I do not at present go into the modes by which that can be made out; but there must be some definite charge of something which displaces the privilege”
 —*Bullivant v. Attorney General for Victoria*, [1901] A. C. at pp. 200 and 201.

Privy Council—Defined, Act 10, 1897, S. 3 (42).

Probate—Defined. Act 5, 1881, S. 3; Act 10, 1865, S. 1.

Procedure—“The term ‘procedure’ has never, that I am aware of, been confined to mere proceedings”—*per Westropp C. J.*, in the matter of the petition of *Ratansi Kahanji*, I. L. R. 2 Bom. at p. 182; as used in S. 3 of Act 10 of 1877 has not the same meaning as it has in S. 6 of Act 1 of 1863—*per Garth C. J.*, in *Runjit Singh v. Meharban Kuar*, I. L. R. 3 Cal. 662; *Rajam Chetti v. Sheshayya*, I. L. R. 8 Mad. at p. 247.

“*Procedure* is but the machinery of the law after all—the channel and means whereby law is administered and justice reached. It strongly departs from its office when in place of

facilitating, it is permitted to obstruct and even extinguish legal rights, and is thus made to govern when it ought to subserve"—per Lord Penzance in *Kendall v. Hamilton*, L. R. 4 A. C. 404, referred to by Banerji J. in *Muhammad Askari v. Radhe Ram Singh and Others*, All. W. N. 1900 at p. 78 See "Practice"

Proceedings—As used in S. 80 of the *Rent Recovery Act* (Madras Act 8 of 1865) does not include tender of patta. The proceedings referred to in that section are limited to summary proceeding for arrears of rent—*Dharmakarta of Tinnanore Temple v. Lachimi Dass*, I. L. R. 26 Mad. 589.

As used in S. 6 of Act 1 of 1868, (*General Clauses Act*) as applied to a suit means the suit as an entirety i. e., down to the final decree—per Petheram, C. J. and Tottenham J. in *Satguri v. Majidan* I. L. R. 15 Cal. 107; not necessarily judicial proceedings—per Mitter and Beverley JJ. in *Umesh Chunder Dass v. Chunchun Ojha* I. L. R. 15 Cal. 357; as used in S. 6 of the *General Clauses Act* (1 of 1868) "is a very general one, it is not limited to proceedings connected with civil suits but includes proceedings other than civil proceedings, and civil proceedings other than suits. When applied to suits, it may be used, and often is used to express the separate steps taken in the course of a suit the aggregate of which makes up the suit"—per Wilson J. in *Deb Narain Dutt v. Narendra Krishna*, I. L. R. 16 Cal. at pp. 272, 273 F. B. See also the case cited therein.

Process for enforcing—As used in Cl. 157, sch. ii. of Act 9 of 1871, see *Poorno Chunder Coondoo v. Prosonno Coomar Sikdar* I. L. R. 12 Cal. 123.

Produce of land—As used in Act 10, 1859 see *Sheo Prasad Tewary v. Uman Prasad Tewary*, N. W. P. H. 1 C. R. 7,

(1869) (*App. Civil*).

Productive powers, increase of—See *Bissesser Chuckerbutty v. Wooma Charan Roy*, 9 W. R. 122.

Profits—The amount received from the land after deducting the collection charges—*Hurro Durga Chaudharani v. Surat Sundari Debi I. L. R. 8, Cal. at p. 335*; “It is the amount got from the property *minus* the cost of getting it—*per Jessel M. R. in Mersey Dock v. Lucas*, [1881], 51, L. J. Q. B. 116.

As used in Cl. 4 of S. 13 of Regulation 8 of 1819 means that which is left to the tenure holder after payment of the rent of the tenure—*Lala Bhairab Chunder v. Lalit Mohan Singh*, I. L. R. 12 Cal. 183.

Prohibited Article—Defined, Act 9, 1894, S. 3(9).

Promise—Defined, Act 9, 1872, S. 2.

“We do not think that to create a promise within the meaning of the section [S. 26, Cl. (3)] of the *Contract Act* (9 of 1872) it is necessary that there should be an accepted proposal reduced into writing; all that is requisite is that there should be a written proposal accepted before action for a written proposal becomes a promise when accepted”—*per Boddam and Moore J.J. in Appa Rao v. Suryaprakash Rao*, I. L. R. 23, Mad. at pp. 97, 98.

As referred to in S. 20 of Act 9 of 1871, see *Raghoji Bhikhaji v. Abdul Karim*, I. L. R. 1, Bom. at p. 407.

Promisee—Defined, Act 9, 1872, S. 2.

Promisor—Defined Act 9, 1872, S. 2.

Promissory note—Defined, Act 15, 1877, S. 3; Act 26, 1881, S. 4; Act 2, 1899 S. 2(22).

Promoter—Defined, Act 11, 1886, S. 3(7).

Promulgated—As used in *Epidemic Diseases Act* (3 of 1897) see *Q.E. v. South I. L. R. 24 Mad. at p. 72.*

Proposing to foreclose—As used in *S. 13, Act 4 of 1872*, see *Hansraj v. Saida P. R. 1881. No. 35; Umed Ram and Another v. Badhur Mul and Others, P. R. 1887, No. 90.*

Property—"It is commonly said that property in land passes through three stages. First it is held by the tribe or class, and is regarded as the common property of the whole body. Holdings indeed are allotted or recognized, because without that agricultural labour could not be performed; but periodically the holdings are exchanged or re-distributed, showing (it is said) that no one regards any particular field as his private property. The next stage is reached when re-distribution is abandoned because each several holding—that of the man with his sons—has become improved, and such family desires to retain permanently its own. But still the *paterfamilias* is the individual owner: he cannot sell or will away the holding. He must share it equally with his sons if he makes a partition, and on his death it will go to all sons equally or to all other heirs if there are no surviving sons. That is said to be the stage when property vests in the family. This stage evidently subsists to a great extent in most parts of India. But gradually the desire to profit by one's skill and labour individualizes property. A number of things conduce to this end. Family quarrels are an unfortunate but common factor. Difference of taste and agricultural capability also have their sphere. Coined money comes into use and men begin to buy and sell land. Finally family breaks up, and *individual ownership*, such as we see it in Europe, with or without the last restraints and survivals of the preceding stage is the third or final condition—*Baden Powell's Land System of British India Vol. I. pp. 110, 111.*

" 'Property is the most comprehensive of all terms which can be used, inasmuch as it is indicative and descriptive of every possible interest which the party can have"—*per Lungdale M. R. Jones v. Skinner*, 5 L. J. Ch. 90; "means something in existence and cannot with any propriety be applied to the reasonable expectation of pecuniary benefit for the loss of which an action is maintainable by the representative of a deceased person"—*per Shephard J. in Yalla Ganguli v. Manudi Dali I. L. R. 21, Mad. at p. 76.*

"The word 'property' may denote the thing to which a person stands in a certain relation, and also the relation in which the person stands to the thing"—*per Chitty J. in re Earnshaw-wall*, [1894] 3 Ch. D. at p. 157.

As used in S. 70 of Act 1, 1886 (*Assam Land and Revenue Regulation*) includes an entire estate as well as a share in respect of which revenue has been separately apportioned—*per Amir Ali and Pratt J.J. in Muhammad Nasim v. Kashi Nath Ghose*, 3, C. W. N. p. 108; as used in S. 378 *Indian Penal Code*, see *Bhagiram Dome v. Ahar Dome I. L. R. 15, Cal. 388*; as used in Act 1, 1879 (*Stamp*), sch. ii, No. 12(b) see *Reference by the Board of Revenue I. L. R. 3 All. 788*; as used in S. 26 of the *Insolvent Act* (11 and 12 V. C. 21) includes 'money'—*per Garth, C. J. and Markby J. in the matter of Ambica Nandan Biswas, I. L. R. 3 Cal. 434*; in the debentures of limited companies does not include uncalled capital.—*In re Johnson v. Russian Spratts Patent Ld.* [1898] 2 Ch. 152; the expectant claim under an inchoate award is not property within the meaning of S. 205, Act 8 of 1-59—*Syad Taffuzul Husain Khan v. Raghunath Prasad* 14, M. I. A. 40; *Abbot v. Abbot and Crump* 5 B. L. R. 382; in S. 405 *Indian Penal Code* refers to moveable property—*per Beverley and Gordon J.J. in Jugdoun Singh v. Q. E. I. L. R.*

Cal. 372; as used in *Chap. 4 of Act 4 of 1882 (Transfer of Property)* "means an actual physical object and does not include mere rights relating to physical objects"—*Mata Din Kasoundhan v. Kazim Husain, I. L. R. 13, All. 432 F. B.*; as used in the *Official Trustees Act (17 of 1864)* "includes choses in action or actionable claims"—*per Sale J. in Sarah Gabriel, v. R. D. Solomon C. W. N. Vol. 4, at p. 75.*

A dedicated bull is not property within the meaning of *ss. 411 and 425 of the Indian Penal Code*—*per. Straight J. in Q. E. v. Nihal I. L. R. 9 All. 349*; *per Norris and Macpherson J.J. Romesh Chunder Sanyal v. Hiru Mondol, I. L. R. 17, Cal. 852*; as used in *S. 463 Indian Penal Code* covers a written certificate—*per Edge C. J. and Aikman J. in Q. E. v. Soshi Bhushan I. L. R. 15, All. 210.*

Defined, *Act 13, 1856, S. 2*; *Act 4, 1869 S. 3*; *Act 24, 1859 S. 1.*

Property in possession of wife—Defined *Act 45, 1860. S. 27.*

Property mark—Defined, *Act 45, 1860, S. 479.*

Property, the subject of suit—In a suit for partition of a joint estate the words "property the subject of suit" in *S. 503, Civil Procedure Code* mean the whole joint estate—*per Petheram C.J. and Pigott, J. in Poresh Nath Mukerji v. Omesh Nath Mittar I. L. R. 17 Cal. 614.*

Proposal—Defined, *Act 9, 1872, S. 2.*

Proprietor—Defined. *Act 11, 1876, S. 3*; *Act 18, 1881, S. 4*; *Act 8, 1885, S. 3*; *Act 22, 1886, S. 3 (6).*

As used in *S. 10, Act 6 of 1862* implies the sole proprietor or whole body of proprietors—*Moolook Chund Mondal v. Mahoosoodan Bachasputy, 16 W. R. 126*; as used in *S. 146, of the Land Revenue Act (19, of 1873), see Lachman Singh v.*

Ghasi, I. L. R. 15 All. 137, see Hanuman Prasad Pande v. Musammatt Babui Munraj Kuari, 6 M. I. A. 412.

Proprietors of land—See *Oolagappa Chetty v. Arbuthnot, 14, B. L. R. 115 P. C.*

Proprietary right—"The term 'proprietary right' does not occur in text books on English Law or jurisprudence. The use of such a phrase is probably due to the feeling that the Government rarely acknowledges anything like a complete unfettered right vested in any one person. The interest in the soil has come to be virtually shared between two or even more grades. It is true that in many cases only one person is called 'landlord' or 'actual proprietor,' but his right is limited; the rest of the right, so to speak, is in the hands of the other grades, even though they are called tenants, or by some vague title such as 'tenure-holders'—The proprietary right seems then a natural expression for the interest held by a landlord, when that interest is not the entire bundle of rights, but only some of them, the remainder being enjoyed by other persons"—*Badden Powell's Land System of British India, Vol. I, pp. 217 and 218.*

The term "proprietary rights" used in *S. 7 of the N. W. P. Rent Act (12 of 1881)* "is equivalent to the term 'full ownership corresponding to dominium in the Roman Law and fee-simple estate in English Law'—per Mahmood and Oldfield JJ. in *Indar Sen v. Naubat Singh I. L. R. 7 All. 553*; but a Full Bench has lately held that the words "proprietary rights" include a part of the proprietary rights—See *Moorlidhar v. Pemraji I. L. R. 22, All. p. 205*; see the observations of Aikman J. *ibi*. The provisions of the corresponding section in the new *Tenancy Act*, however, admit of no difference of opinion—see *S. 10, Act 2, 1901.*

Protected forest—Defined, *Act 7, 1878, S. 28.*

Protected interest—As used in S. 37 of Act 11 of 1859, see *Pranath Mitter v. Kiran Chander Roy* I. L. R. 27 Cal. 290.

Protection and care—See *Ratnabai v. G. I. P. Railway Co.*, 8, Bom. H. C. R. 130.

Proved—Defined, Act 1, 1872, S. 3.

Provided by—With reference to the words “provided by” as used in ss. 584 and 540 *Civil Procedure Code* (Act 10, 1877) Mahmood, J. observes:—“There is a wide distinction between the expressions *provided for* and *provided by*. The word *for* would imply that the remedy was elsewhere provided to meet the contingency; and the word *by* without the word *for* means that the Statute itself says there shall be no appeal”—*Ajodhia Prasad v. Balmakund* I. L. R. 8, All. at p. 364.

Provided always—“The words ‘provided always’ are to be considered as words of reference to all that has gone before them. They constitute a qualification of the ‘preceding limitations’”—*Martelli v. Holloway* I. L. R. 5 H. L. 532.

Provident Fund—Defined, Act 9, 1897, S. 2(1).

Province—Defined, Act 10, 1897, S. 3(43); Act 10, 1865, S. 1; Act 5, 1881, S. 3—See *Maharaja of Jeypore v. Papayamma*, I. L. R. 23, Mad. at p. 548.

Proving a document—See “Attesting a document”.

Public—Defined, Act 45, 1860, S. 12.

Public authority—Defined, Act 2, 1901, S. 2(g).

Public building—Defined, Beng. Act 3, 1899, S. 3(36).

Public documents—Defined, Act 1, 1872, S. 74.

A “*teis khana*” register prepared by a patwari under rules framed by the Board of Revenue under S. 16, *Regulation 12* of

1817, is not a public document—*per* Petheram C. J. and Beverley J. in *Bajinath Singh v. Sukhu Mahto*, I. L. R. 18, Cal. 534; reports made by a police officer under ss. 157 and 168 *Criminal Procedure Code* are not public documents—*per* Collins C. J. and Benson J. (Subramania Ayyar J. *dissentiente*) in *Q. E. v. Arumugam* I. L. R. 20, Mad. 189.

A *jamabandi* prepared by a Deputy Collector while engaged in the settlement of land under *Regulation 7* of 1822 is a public document within the meaning of S. 74, of the *Evidence Act*—*per* Jackson and Tottenham J.J. in *Taru Patur v. Abinash Chander Dutt*, I. L. R. 4, Cal. 79.

Public grant—"The distinction between a grant for services of a public nature and one for services, private and personal to the grantor, is well understood. In the former case the zemindar is not entitled to resume, while in the latter case he may do so when the services are not required or when the grantee refuses to perform the services"—*per* Prinsepp and Ghose J.J. in *Radha Prasad Singh v. Budhu Prasad* I. L. R. 22, Cal. at p. 941.

Public nuisance—Defined *Act 10*, 1897, S. 3(44); *Act 45*, 1860, S. 268; *Act 1*, 1887, S. 3(10)

Public officer—Defined, *Act 14*, 1882, S. 2. An officer of a British Regiment serving under the orders of the Government of India, is a public officer within the meaning of S. 2 of the *Civil Procedure Code*—*Kerring Amir Chand and Co. v. Major F. S. Raiter* P. R. 1879, No. 59; an officer of the India Staff Corps is a public officer within the meaning of Cl. (h) of S. 266, *Civil Procedure Code* read with the interpretation clause (S. 2) of the *Code*—*Calcutta Trades Association v. Ryland* I. L. R. 24, Cal. 102; a municipal secretary is a public officer within the meaning of Art. 22 of the 1st *Schedule* of the *Indian Stamp Act* of 1879—*Reference under S. 46 of Act I of 1879* I. L. R. 19

All. 293; a *khot* or a person collecting the assessment on *dhara* lands is not a public officer within the meaning of *S. 266, Cl. (h)* of the *Code of Civil Procedure*—*per Sargent C. J. in Raoji Moreshwar v. Sivaji Rao Ganpat Rao, I. L. R. 13 Bom. 673.*

Public place—"A place to which persons are in the habit of resorting though without any legal title but without any hindrance or interference is a public place for purposes of the offence of public nuisance.—*The Queen v. Wellard 14, Q. B. D 63*; "a public place is one where the public go, no matter whether they have a right to go or not. The right is not the question. Many shows are exhibited to the public on private property, yet they are frequented by the public—the public go there"—*per Grove J. Ibi at p. 87*; "a *chabutra* which is neither a place to which the public has a right of access, nor a place to which the public are ever permitted to have access, is not, though it adjoins a public road, a *public place* within the meaning of *S. 159 of the Indian Penal Code*—*per Edge C. J. and Banerji J. in Q. E. v. Sri Lal I. L. R. 17, All. 166*; as used in *S. 133 Criminal Procedure Code*, see *Indra Nath Banerji v. Q. E., I. L. R. 25 Cal. 425*; the *chabutra* of a temple to which all classes of the public who were not of the lowest castes had access was a "public place" within the meaning of *S. 13 of Act 3 of 1867*—*per Edge, C. J. and Banerji J. in Q. E. v. Chote Lal and others All. W. N. 1895 p. 127.*

Public policy—"The principles under which the freedom of contract or private dealings is restricted by law for the good of the community"—*W. L. L.*

Mr. Justice Burroughs remarks: "Public policy is an unruly horse, and if a judge gets upon it he is very apt to be run away with"—see *Perry's Oriental Cases at p. 120.*

Public prosecutor—Defined, *Act 5, 1898, S. 4 (1) (t).*

Public purpose—Defined, *Act 1, 1894, S. 3 (f).*

There is no definition of a "public purpose" in the *Land Acquisition Act* (1 of 1891) nor any limitation regarding what is likely to prove useful to the public. For obvious reasons both matters are left to the absolute discretion of the Local Government"—per Amir Ali and Stephen J. J. in *Ezra v. The Secretary of State*, *I. L. R.* 30 *Cal.* at 77.

Public religious purposes—As used in *S. 539 Civil Procedure Code* see *Sajedur Raja v. Baidnath Deb*, *I. L. R.* 20 *Cal.* 397; see *Kankya Lal and Others v. Saligram*, *All. W. N.* 1894, p 159.

Public road—The term "public road" "includes also a fair margin which is used for various purposes in connection with the road"—per Norris and Prinsep JJ., *Harendro Coomar Choudhary v. Taraomi Choudharani*, 7 *C. L. R.* at p. 273.

Public servant—Defined, *Act 45, 1860, S. 21* A surveyor is a "public servant" within the meaning of *S. 21, Indian Penal Code*—per Stevens and Pratt JJ. in *Bajoo Singh v. Q. E. I. L. R.* 26 *Cal.* at p. 160; "an employe under the Court of Wards is a public servant within the meaning of the *Indian Penal Code*"—per Aikman J. in *Q. E. v. Mathura Prasad*, *I. L. R.* 21 *All.* at p 130; he is not—per Turner C. J. in *Q. E. v. Arayi*, *I. L. R.* 7 *Mad.* 17.

A patwari preparing a register under rules framed by the Board of Revenue under *S. 16, Regulation 12 of 1817* is not a public servant—per Petheram C. J. and Beverley J. in *Bajinath Singh v. Sukhu Mahton*, *I. L. R.* 18 *Cal.* 534; a carter employed by Government is not a public servant within the meaning of *S. 21 Indian Penal Code*—per Turner C. J. in *The Queen v. Nachimuttu and Others*, *I. L. R.* 7 *Mad.* 18; "must be taken to mean one appropriated to the use of the public"—per Berkley J. in *Kashi Ram v. The Empress*, *P. R.* 1882 *No.*

17 (*Crl.*); "Railway servants proper as long as they do not cease to be such continue to be "public servants for the purposes of Chap. 9 of the *Indian Penal Code*, whatever functions they may be temporarily discharging at the time when the offence by or, in respect of them is committed"—*per* Stogdon and Chatterji JJ. in *Q. E. v. Zaharia and Another*. P. R. 1898 No. 9 (*Crl.*)

Public spring or reservoir—The words "public spring or reservoir as used in S. 277, *Indian Penal Code*, "do not include a public river"—*per* Markby and Prinsep JJ. in *Empress v. Haldhar Poree and Others*, I. L. R. 2 Cal. 383.

Public street—Defined, *Beng. Act 3 of 1899, S. 3* (37). When a street is protected by a gate closed at night by a *polia* or watchman who lives over the gate and is under the control of, and paid by the owners of the houses in the *pol*, and there has been no dedication of the land to the public, and the public has acquired no such a right of going on it as to make it a public street which it was intended by the *Act* (6 of 1873) to vest in the Municipality it is not a public street"—*per* Sargent C. J., *Ahmadabad Municipality v. Muni Lal Udenath*, I. L. R. 20 Bom. at p. 149—Melvil J. observes: "No one's right of property would be safe if the Municipality could take advantage of such limited access by the members of the public, in order to make out a claim to hold the land in question as public property"—*Kalidas v. Municipality of Dhandhuka*, I. L. R. 6. Bom. at p. 689.

Public use—The term "public use" as used in S. 19 of *Act 15 of 1859* "means that a man shall not by his own private invention which he keeps locked up in his own breast or in his own desk, and never communicates; take away the right that another man has to a patent for the same invention. The prior use of an invention need not be general, a single instance of the use

would be sufficient but it must be public".—per *Spankie J.* in *Sheen v. Johnson*, *I. L. R. 2 All.* at p. 378.

Publicly known—See *Sheen v. Johnson*, (*Supra.*)

Publisher—As used in the *Printing Presses and News paper Act* (25 of 1867) "is used in a restricted sense and does not include a person who merely sells a book or paper"—per *Ghose and Rampini JJ.* in *Q. E. v. Banka Patni*, *I. L. R. 23 Cal.* 414; as used in para. 2 of S. 294, *Indian Penal Code* "includes both the person who sends a proposal as well as the proprietor of a newspaper who prints the proposal as an advertisement"—per *Nanabhai Haridas J.* in *Q. E. v. Mancherji Kavasji Shapurji*, *I. L. R. 10 Bom.* 97; "a man who causes a book to be printed, and offers it to the public for sale, is a publisher within the meaning of ss. 3 and 12 of Act 25 of 1867"—per *Edge C. J.* (*Brodhurst J.* concurring) in *E. v. Joti Prasad*. *All. W. N.* 1887, p. 95.

Publishing—As to what is a "publishing an imputation" within the meaning of S. 499 *Indian Penal Code* See "Making."

Punishment—As used in S. 2 of the *Whipping Act* (6 of 1884) "means the total of punishment awardable under the *Indian Penal Code*"—per *Jardine J.* in *Q. E. v. Dagadu*, *I. L. R. 16 Bom.* 357.

Purchase money—"Purchase money is not defined, and there is nothing in S. 17 *Punjab Laws Act* or S. 214 *Civil Procedure Code* to put any restricted or technical meaning"—per *Frezelle J.* in *Mohammad Raft and Others v. Khazan Singh and Others*, *P. R.* 1892, No. 67.

Purchased—As used in Art. 135 *Sch. II Limitation Act* "cannot be taken as including 'mortgaged'"—per *Aikman J.* in *Behari Lal v. Mohammad Mutaki*; *I. L. R. 20 All.* at p. 492; "it is

used in the sense in which it is familiar to English lawyers (*viz* including mortgages) and not in the restricted sense"—*per* White C. J. and Shephard J. (Davies J. dissenting) in *Manavikraman Eltan Thamburan v. Ammu*, I. L. R. 24 Mad. 471 F. B. See the cases cited therein.

Purchaser—As used in Art. 134 of the *Limitation Act* "means a person who purchases that which is *de facto* a mortgage upon the representation made to him and in the belief that it is an absolute title"—*per* Sargent C. J. in *Pandu v. Vithu*, I. L. R. 19 Bom. 140; includes a mortgagee as well as a purchaser properly so called"—*per* Sargent C. J. in *Yasuramji Kulnath, v. Balkrishna Lakshman*, I. L. R. 15 Bom. 583.

Purpose—Defined, *Act 13, 1887, S. 2 (3)*.

Put in a course of transmission—"A letter of acceptance to a proposer, not correctly addressed, could not, although posted, be said to have been *put in a course of transmission* to him within the meaning of S. 4 of the *Contract Act* (9 of 1872)—*per* Elge C. J. and Oldfield J. in *Ramdas Chuckerbutty v. The Official Liquidator Cotton Ginning Co. Ltd. Cawnpur*, I. L. R. 9 All. 366.

Putni talook—"The putnee talook is nothing more than a perpetual lease of a talook or Zemindari. Regulation 8 of 1819 deals with this tenure, which had its origin on the estate of the Rajah of Burdwan. The Regulation recites that by the rules of the Permanent Settlement, the proprietors of revenue paying estates that is, the individual answerable to Government for the revenue then assessed on the different mehals, were declared entitled to make any arrangements for the leasing of their lands in talooks or otherwise which they might deem most conducive to their interests subject by Regulation XLIV of 1793 to two limitations; first that the jamma or rent should not be fixed for more than

ten years; and second that in case of sale for arrears of revenue, such leases or arrangements should stand cancelled from the day of sale"—*Phillip's Land Tenures of Lower Bengal*, T. L. L. 1875 p. 395; *prima facie* imports a hereditary tenure"—*per Markby J.*, in *Tarnee Charan Gangooly v. Watson & Co.* 12 W. R. at p. 416: S. C. 3 B. L. R. 44 at p. 441 (*App. Civil.*)

Puttro poutradi—The Sanskrit words "puttro poutradi" used in the will of a Hindu "mean heirs generally"—*per Jackson and McDonell JJ.* in *Hari Dasi Dehi v. The Secretary of State for India*, I. L. R. 5 Cal. at p. 240; "apply also to the female heirs of a female when by law the estate will descend to such heirs"—*Ram Lal Mukerji v. The Secretary of State for India*, 8 I. A. 46.

Qualified acceptance—Defined, *Act 26, 188, S. 86, Explanation.*

Qualified Officer—Defined, 44-5 V. C. 58, S 122(b).

Qualifying tax—Defined, *Bom. Act 188, S. 11(3)*

Quarry—Defined, *Act 5, 1886, S. 3(5).*

Quasi contract—"A quasi-contract is not a contract at all. The commonest sample of the class is the relation subsisting between two persons one of whom has paid money to the other through mistake. The word *quasi* prefixed to a term in *Roman Law*, implies that the conception to which it serves as an index is connected with the conception with which the comparison is instituted by a strong superficial analogy or resemblance"—*Maine's Ancient Law*, p. 344.

Quasi judicial—See "Judicial Proceeding".

Questions involved in the suit—As referred to in the second para. of S. 32 of the *Code of Civil Procedure* "are questions

between the plaintiff and the defendant and not questions which may arise between co-defendants or co-plaintiffs *inter se*”—per Edge C. J. and Brodhurst J. in *Har Narain Singh v. Kharag Singh* I. L. R. 9, All. 447.

Question of law involved—The words ‘question of law involved’ in S. 40(1)(d) and (2), of the *Panjab Court’s Act*, 1884, do not include *every* point of law that may arise incidentally in a case, but refer to some question of law similar in its nature to a custom or a question of general interest”—*Nur Ilahi and Others v. The Municipal Committee, Delhi* P. R. 1897, No. 68 (Chatterji and Clarke J.J.).

Rahan—The word “rahan” is a generic term denoting a mortgage whatever the nature of the mortgage may be—per Banerji J. in *Jafar Husain v. Ranjit Singh* I. L. R. 21 All. at p. 10; *Sheoratan Kuar v. Mahipal Kuar* I. L. R. 7, All. 258 F. B.

Raibandi—In former times there were two modes in which the enhanced assessment of a ryot’s rent was fixed; “one of these was to add the subsequent abwabs and the exactions by the zemindar to the *assul* or original rate, and then to distribute this according to the quantity and quality of land held by the ryots, or the estimated or actual crop. The other mode was to assess at a fixed rate for the *beegah*, whatever might be the crop, which rate included the chief items of exaction or extra assessment.” “Those rates were well known, and registers of them were kept by the patwaris and canoongoes in records called village and *pergana reybundees* (or *raibundis*)—*Phillip’s Land Tenures of Lower Bengal* p. 112.

Railway—Defined, *Beng. Act 3*, 1899 S. 3(38); *Act 10* of 1895, S. 2(1); *Act 9*, 1890, ss. 3(4), 148(1).

Railway administration—Defined, *Act 9*, 1890 S. 3(6).

Railway Company—Defined. *Act 9, 1890 S. 2(5); Act 10, 1895, S. 2(3).*

Railway servant—Defined, *Act 9, 1890 S. 3(7); S. 148(2).*

Raiyat—Defined, *Act 8, 1885 S. 3.* The term 'raiya' indicates tenancy which does not necessarily arise out of any contract between a landlord and a cultivator. In Bengal it has always been the custom to call the village cultivators under the persons constituted landlords at the Permanent Settlement (in 1793) as 'raiya's'. Some of them are modern contract tenants, but a great many are really the descendants of the original clearers and settlers, who would have been regarded as owners of their holdings but for subsequent historical circumstances and changes. But perhaps the commonest use of the term is to signify the landholder who does not claim—or at any rate has long lost any tangible right to—the ownership of anything beyond his own field or fields. Such landholders exist all over Bombay, Madras and indeed in other parts wherever the 'landlord village' has not come into sight, owing to the growth of a landlord class—Technically, the position of such a landholder may be differently defined in different parts. The *Bombay Revenue Code* calls him 'occupant' and defines his rights. There is no Code in Madras and no definition, but judicial decisions have recognized the occupant who pays revenue as *defacto* proprietor of his holding. See *Baden Powell's Land System of British India Vol. I. pp. 22, 23* "Ryots" (or raiya's) as used in *Act 10 of 1859* "contemplates ryots as distinct from under tenants"—*Babu Dhanpat Singh v. Gooman Singh* 11, *M. I. A.* at p. 462; see also *Nutterpet Singh v. Mr. W. Fitzpatrick* 11 *W. R.* 206. The definition of the term (ryots) in the *Bengal Tenancy Act* (8 of 1885) is not exhaustive and there is nothing in that definition which would exclude a person who had taken land for horti-

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cultural purposes—*Hari Ram v. Nursingh Lal I. L. R. 21, Cal. 129.*

Raiyatwari tenure—See ‘Land tenure’

Rangoon Town—Defined, *Act 6, 1900, S. 2(d).*

Rape—Defined, *Act 45, 1860, S. 375.*

Rate—Defined, *Act 9, 1890, S. 3(13).*

Rates and cesses—Defined, *Act 16, 1887, S. 4(11 ; Act 17, 1887, S. 3(9).*

Real value—Defined, *Act 8, 1878, S. 30 ; Act 2, 1896, S. 7(2) ; (3).*

Realized—As used in S. 295 of the *Code of Civil Procedure* “means so realized as to be available for distribution among the decreeholders”—*Hafiz Mahammad Ali Khan v. Damodar Pramanick I. L. R. 18, Cal. 242.*

Reason to believe—Defined, *Act 45, 1860, S. 26 ; Act 15, 1887, S. 3(6) ; Act 5, 1892, S. 2(6) ; Regn. 3, 1881, S. 2 ; Regn. 2, 1888, S. 2(4) ; Regn. 4, 1890, S. 3(5).*

Reasonable cause—As used in S. 13 of 1879, (*Legal Practitioner's Act*), see *In re Quarry*, 17, *I. A. p. 199*: Defined, *Act 1, 1882, S. 171, explanation.*

Receipt—Defined, *Act 2, 1899, S. 2(23)*; as used in S. 3, *Cl. 17* of the *Stamp Act*, see *Q. E. v. Jagarnath I. L. R. 11, Cal. 267.*
See *Tika Ram v. Ramchand, All. W. N. 1888, p. 82.*

Receive—To “receive” goods “means to obtain the possession of”
—per Sir Richard Couch *C. J.* and Loch *J.* in *The Burmah Co. Ltd. v. R. Snadden*, 17 *W. R. 120.*

Receive and retain—As used in S. 56 of the *Administrator General's Act 2, of 1874* “refer rather to the receipt or retention

by an executor or administrator of commission or agency charges from the assets of the estate than from any other person"—per Ghose and Gordon J. J. in *Nurain Coomari Debi v. Shajani Kanta Chatterjee* I. L. R. 22, Cal. at p. 19.

Reciprocal promise—Defined, Act 9, 1872, S. 2.

Reclaim—"Reclamation means in the case of submerged or overflowed land the rescuing of it from being submerged. The rendering it fit for cultivation is not the original meaning in regard to submerged land. That would be its meaning in regard to the reclamation of unarable land"—per Ranade J. in *Shamrao Pandurang v. Secretary of State* I. L. R. 25 Bom. at p. 42.

Recognized agent—Defined, Act 18, 1881, S. 4; Regn. 4, 1876, S. 4(c) of Sch. , Regn. 1, 1877, S. 28.

Record—"A *batwara khasra* or measurement paper prepared under S. 54 of the *Statutes Act* (Beng. Act 8 of 1876) is not a record within the meaning of S. 35 of the *Evidence Act*"—per Rampini and Stevens J.J. in *Perma Roy v. Kishen Roy* I. L. R. 25, Cal. 90.

Recorded co-sharer—"A co-sharer whose name is recorded in *shamlat* though his particular share is not shown in the *khewat* is a *recorded co-sharer* within the meaning of S. 93(h) of the *N. W. P. Rent Act* (12 of 1881)"—per Petheram C. J. and Tyrrel J. in *Shib Shankar Lal v. Banarsi Das*, I. L. R. 7, All. 891—Defined, Act 17, 1876, S. 69.

Recover—"The word 'recover' has a technical meaning in law whereby it signifies to recover by action and by the judgment of the Court"—*Fergusson v. Davison*, 51, L. J. Q. B. 266; "is an apt word for pecuniary remedies, and the word 'enforce' for remedies against the person"—per Sir Barnes Peacock in *Hodge v. The Queen*, 9 App. Cas. at p. 134.

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Recovery—*Recovery* "is a well known legal term in the English Law of real property. It means the obtaining a thing by judgment or trial"—As used in S. 268(a) of the *Civil Procedure Code* "is not used as a legal term at all, but as it would be in the language of ordinary life"—*Nandu v. Sundar and Others P. R.* 1894 No. 142.

Recruit—Defined, *Act 12, 1894, S. 4 (9)*; *Act 5, 1869, Pt. 1, Cl. (e) (9)* (*inserted Act 12, 1894, S. 4*).

Recruiter—Defined, *Act 6, 1901, S. 2 (o)*; *Act 21, 1883, S. 6*; *Act 1, 1882, S. 3*.

Recruiting District—Defined, *Act 6, 1901, S. 2 (p)*.

Re-erect—Defined, *Bengal Act 3 of 1899, S. 3 (39)*.

Reflection of a son—The expression "reflection of a son" as used in the Hindu Law of adoption "is a mere descriptive epithet applied to the child adopted. It does not limit the generation from which a son might be adopted—For example the adoption of a grand nephew cannot be held invalid on the ground that he is the reflection of a grandson rather than a son"—*per Jackson and Tottenham JJ. in Haran Chander Banerji v. Hurro Mohan Chuckerbutty, I. L. R. 6 Cal. at p. 48*.

Registered—Defined, *Act 10, 1897, S. 3 (45)*; *Act 1, 1869, S. 2*; *Act 11, 1876, S. 3*; *Act 15, 1877, S. 3*; *Act 2, 1882, S. 3*; *Act 10, 1885, S. 1*; *Act 22, 1896, S. 3 (14)*; *Act 1, 1887, S. 3 (11)*; *Act 4, 1882, S. 3*; *Act 8, 1885, S. 3 Mad. Act 1, 1891, S. 3 (28) Mad. Act 3, 1896, S. 2*; *N. and O. Act 1, 1887, S. 2 (30)*. As used in S. 49 of the *Registration Act (3 of 1877)* 'refers to the Act of registration by the registering officer and not to matters of procedure or conduct of the parties seeking registration which are governed by special provisions of the Act"—*per Edge C. J., Straight and Tyrrell JJ. in Hardei v. Ram Lal, I. L. R. 11 All. 319*.

Registering officer—Defined, *Act 6, 1901, S 2 (g); Act 21, 1883, S. 6; Act 1, 1882, S 3.*

Registration—As used in *Act 3 of 1877* “does not apply to the procedure provided for sale-certificates”—*per Stewart C. J. in Masarut-un-nyssa v. Adit Ram, I. L. R. 5. All. 560.*

Regulating the travelling—The words “regulating the travelling” as used in *S. 24 of the Bombay Tramways Act of 1874* “mean laying down rules as to how persons shall travel and cannot be held to include rules for the conduct of the Company’s servants prescribing that they shall do, or what they shall not in the matter, for instance, of issuing tickets”—*per Parsons and Ranade JJ, in Manackji Dadabhai v. The Bombay Tramway Co., I. L. R. 22 Bom. 739.*

Regulation—Defined, *Act 10, 1897, S. 3 (46); Act 14, 1881, S. 12. Beng. Regn. 7, 1828, S. 25 (Am. Act 14, 1881, S. 12).*

Formerly, “the legislative power had been to make ‘Rules, Regulations’ and ordinances; the term Regulation was consequently adopted as most properly describing the enactments issued. Under the 3 and 4 Will. IV *Cup. 85* (passed on the 28th August 1833) the power was given to make laws as well as Regulations; and it thence-forward became the custom to call the enactments of the Governor-General in Council ‘Acts.’” “There is but little specific difference in the nature of a Regulation and an *Act*, except that the former was less concisely and technically drafted, and were usually preceded by the detailed expositions of the motives and purpose of the enactments, previously alluded to. This in *Acts* has been replaced by the brief pre-amble”—*Baden Powell’s Land-System of British India, Vol. I p. 82.*

Regulation Provinces—See “Non-Regulation Provinces.”

Re hearing—As used in *S. 169 of the Indian Companies Act 6 of 1882* “means re-hearing in the nature of an appeal”—*Parvati*

Shankar v. Ishvardas Jaggivandas, I. L. R. 19 Bom. 208.

Rejecting the plaint—The words “rejecting the plaint,” as used in S. 2 of the *Civil Procedure Code* “are not limited to the cases provided for in ss. 53 and 54”—*per Mitter and Agnue JJ. in Beni Ram Bhutt v. Ram Lal Dhukri, I. L. R. 13 Cal. 189 at p. 191.*

Relating to execution—The words “relating to execution” as used in S. 244 of the *Code of Civil Procedure* “must be restricted to the contents of the order made or to how far it has been carried out, and do not, therefore, include an agreement not to execute the decree”—*per Sargent C. J. and Telang J. in Harshet v. Hari Das Khemji, I. L. R. 17 Bom 23.*

Relative—As used in S. 105 of the *Indian Succession Act* “refers to kindred only, as set forth in the table of consanguinity annexed to S. 24 of the *Act*, and has no application to any relationship by marriage”—*per Subramanya Ayyar and Bhashyam Ayyangar in Administrator-General of Madras v. Simpson, I. L. R. 26 Mad. 532.*

Release—See “Discharge.”

Relief—The word “relief” “is not a term of exact or precise technicality, but simply means the remedy which a Court of Justice may afford in regard to some actual or apprehended wrong or injury, such remedy being large or small as the case may be. It is not synonymous with cause of action”—*per Stewart C. J. in Sarswati v. Kunj Behari Lal I. L. R. 5, All. at p. 359.*

Relief claimed—The words “relief claimed” as used in *Explanation III* of S. 13 of the *Civil Procedure Code* “apply only to something which forms part of the ‘claim’ strictly so called, that is, something which the plaintiff may claim as of right, something included in his cause of action, and which it he establishes

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his cause of action the court has no discretion to refuse. The words 'relief claimed' do not in my opinion, include something which the plaintiff cannot in the suit claim as of right, but can only claim in the sense of an appeal to the discretion of the court, and which the court may refuse in the exercise of its jurisdiction on grounds of general expediency or otherwise even if the cause is fully established"—*per Strachy C. J.* in *Ram Dayal v. Madan Mohan Lal*, *All. W. N.* 1899 at pp 154 and 155 *S. C. I. L. R.* 21 *All.* at p. 433.

Religion—A person who has no notion of eternity, or of a future state of rewards and punishments cannot be examined as a witness—see *Rex v. White*, 1 *Leach C. C.* 430; *Mews Digest* Vol. 6, p. 895.

Religious usage or institution—"The rule of *Mahammadan Law* as to pre-emption is a 'religious usage or institution' within the meaning of S. 24 of the *Bengel Civil Courts Act* (5 of 1871)"—*per Mahmood J.* in *Gobind Dayal v. In yotul'ah*, *I. L. R.* 7. *All.* 775. See also *Musammat Shamsulnissa v. Musammat Zohra Bibi and another*, *N. W. P. H. C. R.* (1874) at p. 7.

Remainderman—See *Saidan Singh v. Nihal Singh*, *P. R.* 1885, No. 48; *Bala v. Juti and Others*, *P. R.* 1883, No. 155 *P. R.* 1895, No. 18.

Remedy—Defined, *Act* 23, 1870, S. 3. See "Claim".

Remission system—Defined, *Act* 9, 1894, S. 4(5).

Render—"A word which in English language has many meanings and which in one sense would undoubtedly include or imply the rendering of service or labour. But the primary meaning of the word is to 'return', to 'pay back', to 'restore' and among other meanings the word simply means 'to give on demand', 'to give', 'to assign' to surrender"—*per Mahmood J.* in *Waris Ali v. Muhammad Ismail and Others* *All. W. N.* 1886 at p. 223.

Rent—Defined, *Act 9, 1898, S. 2(8); Act 18, 1881, S. 4; Act 9, 1883, S. 3; Act 8, 1885, S. 3; Act 22, 1886, S. 3(5); Act 16, 1887, S. 4(3); Act 9, 1839 S. 4(6); S. 9(6); Act 2, 1901, S. 4(3); Act 4, 1882, S. 105; Act 17, 1887, S. 3(4); Mud. Act 1, 1887, S. 2(3).* As used in *S. 189 of Act 12 of 1884*, "cannot be extended so as to include revenue"—*per Aikman J. in Tilakdhari Rai v. Soghra Bibi, I. L. R. 18, All. 802*; as used in *S. 6 of Act 11 of 1865* "is used in the ordinary sense of a return in money or kind for the enjoyment of specific property held by one person from or under another"—*The Jagirdar of Arnu v. Peryauna Mudely, M. H. C. R. (1869—70) at p. 317*; as used in *S. 65 of the Bengal Tenancy Act 8 of 1885* "includes road cess payable by the landlord"—*Nobin Chand Nuskur v. Bansinath Pramanick, I. L. R. 21, Cal. 722*; see *Rajni Kant Nag v. Jageshwar, I. L. R. 20, Cal. 254*; as defined in *S. 2 of the N. W. P. Rent Act (12 of 1881)* "includes services or labour rendered for the use of land"—*per Oldfield J. (Mahmood J. dissenting) in Waris Ali v. Mahammad Ismail and others, All. W. N. 1886 pp. 221, 222*—*Mr. Justice Oldfield* quotes *Blackstone* who defines rent thus: "The word 'rent' or render, *relitus*, signifies a compensation or return, it being in the nature of an acknowledgment given for the possession of some corporeal inheritance. It is defined to be a certain profit issuing yearly out of lands and tenements corporeal. It must be a profit, but there is no occasion for it to be as it usually is, a sum of money, for spurs, capons, horses, corn, or other matters may be rendered by way of rent. It may also consist in service or manual operations, as to plough so many acres of ground to attend the king or the lord to the wars, or the like, which services in the eye of the law are profits." Where land was granted by a talukdar to a person for the purpose of digging a tank subject to the right of taking water from the tank when dug, *Norman Offg. C. J.* held that the right to take water was of the nature of reservation of rent in kind. His Lordship observing

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"Water may be treated as produce of the land, a portion of which the zemindar and those authorized by him are entitled to take. And the right to take it may be considered as of the nature of a reservation of rent in kind"—*Pezeeruddin v. Madho Sudhan* 2, W. R. p. 21 at p. 17 (*Civil Rulings*) see "Revenue"—see *Abdul Aziz Sahib v. Cuddapah Municipality*, I. L. R. 26, Mad. 475.

Rent payable—The words "rent payable" as used in S. 189 of the N. W. P. Rent Act (12 of 1881) "include cases in which the question whether any rent at all is payable by the tenant has been a matter in issue and has been determined"—*per* Strachey C. J. and Banerji J. in *Beni Prasad Kuari v. Butulan Bibi*, I. L. R. 23, All. 284; see also the cases cited therein; "mean the 'rate of rent payable' and not merely the actual amount of money which is due at any given time by the tenant to his landlord"—*per* Straight and Young JJ. in *Radhia Prasad Singh v. Pargash Rai*, I. L. R. 13, All. 193; see also the cases cited therein.

Repairs—Defined, Act 2, 1902, S. 2(g).

Report—As used in S. 66A of the *Criminal Procedure Code* "includes the formal report forwarded to the Magistrate under S. 155"—*Reg. v. Jafar Ali* 8, Bom. H. C. R. at p. 115; as used in Cl. (2) S. 14 of the *Guardians and Wards Act* (8 of 1890) "refers not to a judicial reference but to a ministerial act"—*per* Maclean C. J., Prinsep and Amir Ali JJ., *In the matter of Fakharuddin Chaudhari Minor* I. L. R. 26, Cal. 133.

Representative—Defined, Act 3, 1877, S. 3; Act 22, 1886, S. 3(12). As used in S. 244 of the *Code of Civil Procedure* "when taken with reference to the judgment-debtor does not mean only his legal representative, that is, his heir, executor or administrator, but it means his representative in interest and includes a pur-

chaser of his interest"—*Ishan Chandar Sircar v. Beni Madhab Sircar* I. L. R. 24 Cal. 63, *F. B. Ramesher Prasad v. Ran Bahadur Singh* I. L. R. 12, Cal. 458; "when used with reference to a decreeholder it includes the purchaser of the decree from the decreeholder by an assignment in writing"—*per Macpherson and Stanley J.J.* in *Dwar Baksh Sircar Fatik Juli*, I. L. R. 26 Cal. 250; applies to representatives in interest—*Ram Narain v. Dwarka Nath Khetry*, I L R 27, Cal. at p. 267, "it does not include an Official Assignee"—*per Sale J.* in *Chand Mal v. Rames Sunder Dassi*, I. L. R. 22, Cal. at p. 263; *per Oldfield and Tyrrell J.J.* in *Kashi Prasad v. Miller* I. L. R. 7, All. 752. With reference to the question whether an auction purchaser is or is not a representative of the judgment-debtor within the meaning of S. 244 the authorities are conflicting. The Calcutta High Court holds that he is a representative within the meaning of the section, and apparently makes no distinction between him and a purchaser by private sale—(See *Ishan Chandar Sircar v. Beni Madhab Sircar Supra*). The Allahabad High Court holds that he is not (see *Badri Prasad v. Sarju Prasad*, W. N. 1894 p. 59, Banerji J.). As to the purchaser by a private sale the Allahabad High Court holds that he is a representative within the meaning of the section only when he purchases the property in respect of which either a decree for sale is passed or which is actually under attachment in execution of a decree. The former view was taken by Knox and Burkitt J.J. in *Janki Prasad v. Ulfat Rai* (W. N. 1894, p. 38) and the latter by Edge C. J. and Blair J. in *Lalji Mal v. Nand Kishore* (I. L. R. 19 All. 332). See also *Madho Das v. Ramji Patak*, I. L. R. 16, All. 286; as used in S. 8 of Regulation 17 of 1806, see *Radhey Tewari v. Bujha Misra* I. L. R. 3, All. 413.

Reside—Defined, *Beng. Act 3, 1899, S. 3 (40)*; *Bom. Act 3, 1888, S. 3(n)*; James L. J. remarks: "I am of opinion that a man may

be said to reside where he is to be found daily. Certainly this would be so if he had no fixed sleeping place. And I think it is not the less so if he happens to sleep always at his mother's house or elsewhere"—*Ex Parte Breull. In re Bowie*, 16 Ch. D. at p. 487—"It is true that neither expression (*reside, dwell*) necessarily implies a permanent state of things, but yet when we wish to speak of residence for a limited time, we apply a limiting adjective. When in ordinary language you speak of a man's residence without a qualifying adjective his permanent residence is understood"—*per Farran J. in Shri Gowami v. Shri Govardhanlalji*, I. L. R. 14 Bom. at p. 549; as used in S. 17 of the *Code of Civil Procedure Explanation I*, the term residence "is applied to the temporary lodging of a defendant in respect of a cause of action arising at the place where he has such temporary lodging. This is an enlarging explanation for a limited purpose and not an interpretation or definition of the word as usually understood"—*Ibi.* As used in S. 5 of the *Insolvent Act* when applicable to insolvency of traders "includes an occupation for the purpose of trading whether or not accompanied by sleeping or dwelling"—*per Pontifex J., In re Howard Brothers Insolvent*, 11 B. L. R. 254; "In our opinion the word 'resides' (as used in Cl. (a) of S. 33 of the *Indian Registration Act*, 1877) must mean in that clause *staying or living for the time being*. It has nothing to do with domicile. There is no definition in the *Registration Act*, but we think that *Explanation I* of S. 17 of the *Civil Procedure Code* would be a very fair explanation of the meaning of the word 'resides' in Cl. (a) of S. 33 of Act 3 of 1877"—*per Edge C. J. and Blenerhasset J. in Ram Kuber v. Har Charan*, All. W. N. 1896 p. 170. "*Bare residence is sufficient under S. 648, Civil Procedure Code*". "*Dwell has a more extended signification than reside*"—*per Brandt J. in Everet v. Frere*, I. L. R. 8 Mad. 205.

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Residence—Defined, *Mad. Act*, 1884, S. 3 (aa). Residence “means the place where a man lives with his family, where he may be expected to be when his business does not call him away—where he passes the night, and in respect of which he pays rates”—*Greenham v. Child*, 24 Q. B. at p. 30—“The meaning to be given to the word (residence) in Legislative enactments depends upon the intention of the Legislature in framing the particular provision in which the word is used. The ‘residence’ intended in S. 380 of the *Code of Civil Procedure* (Act 10, 1877) is residence under such circumstances as will afford a reasonable probability that the plaintiff will be forthcoming when the suit is decided—per Sargent C. J. in *Muhammad Shaffi v. Laldin Abdulla*, I. L. R. 3 Bom. 227; as used in S. 5 of Act 40 of 1858, see *Sheikh Muhammad Husain v. Akbar Husain*, 17 W. R. 275 Lord Kenyon remarks: “It never can be contended that in order to constitute a residence in any place, it is necessary to reside any given number of days, or even any great part of the year. It happens perpetually that persons have different places of abode, in some of which, they reside more or less as suits their convenience”—*The King v. Sargent*, 5 T. & R. 466.

Sir Montague E. Smith observes: “Where in a condition of residence no manner or period of residence is presented, but residence simply and without definition, exclusive residence is not supposed to be meant; and that in such cases the occasional use of the house and keeping an establishment in it, with the intention of again using it as a residence is a sufficient compliance with the condition”—*Ganendro Mohan Tagore v. Jutendro Mohan Tagore*, 14 B. L. R. at p. 71.

Resident—Defined, *Act* 2, 1864, S. 1; *Bom. Act* 1, 1883, S. 3; *Regn.* 11, 1887, S. 2(4). The word *resident* “must be construed according to the intention of the Legislature. It is not necessary, that

the word has the same meaning in different enactments, nor even in different sections of the same enactment"—*per* Melvill J. in *Ramchandra Sakharan v. Keshav Durgaji*, I. L. R. 6 Bom. at p. 101.

Residue—See "Surplus."

Resort—"The meaning of the word 'resort' is not satisfied unless there has been a physical resorting"—*per* Lord Russell C. J. and Hawkins J. in *The Q. v. Brown*, [1895] 1 Q. B. at pp. 130 and 132.

Respectable—It is "a description built of many circumstances"—*per* Lord Smith in *Ram Sabuk Bose v. Monmohini Dossee* 2 I. A. at p. 80.

Hundies payable to a "respectable person" was held to have the same legal effect as payable "to bearer"—*per* Stewart C. J. and Tyrrel J. in *Balmakund Das v. The Collector of Jounpur as Manager on behalf of the Court of Wards and Hari Har Das*, All. W. N. 1884 p. 3.

Restrained—As used in S. 27 of the *Contract Act* (9 of 1872) "does not mean an absolute restriction, and is intended to apply to a partial restriction—a restriction limited to some particular place"—*Mahesh Chandar Pramanik v. Raj Coomar Das*, 22 W. R. 370.

Retail—Defined, *Act* 22, 1881, S. 3; *Act* 12, 1896, S. 3(n); *Mad. Act* 1, 1884, S. 3(v).

Revenue—Defined, *Act* 22, 1886, S. 3 (4); *Act* 3, 1901 S. 4 (7); *Act* 23, 1850, S. 12; *Act* 12, 1851, S. 16; *Beng. Act* 7, 1868, S. 1; *Mad. Act* 6, 1867, S. 1; *Regn.* 1, 1889, S. 3 (1); *Regn.* 3, 1889, S. 37 (1).

The Rulers of the successive Governments in all parts of India, "have at all times raised the greater part of their State income, by levying a charge on the land. As a matter of fact it came to be universally acknowledged principle, that the King, Raja or Chief of a territory, had a right to a *share in the produce of all cultivated lands*. In time as might be expected, this revenue came to be no longer taken in kind, but in the form of a money payment, made at certain seasons, when the harvests had been realised. As a matter of fact while the early Rajas are supposed to have taken no more than the sixth, it is quite certain all or many of the latter ones demanded the half. But when the time came for the Government (it happened under the Moghul Rule) to change the grain revenue into cash, the first idea was to roughly estimate the standard share as yielding so many 'maunds' of grain for each crop of soil, and then to value it at an average price. The early methods of fixing the grain value were, however, so rough, that practically it was but an arbitrary process effected with moderation and with reference to the ability of the cultivators to pay easily. The change from a grain revenue to a cash payment had one important consequence.—from that time forward it has been recognized as a general rule—certainly it was so by the Muhammadan Governments—that the money payment needed to be revised from time to time, *i. e.* after the lapse of a suitable term of years. In the days of the later Moghul rule the revenue was revised not by any regular process of re-valuation, but by the expedient of adding on cesses to the existing totals. But under the British Government such a device was not likely to be followed—at least not as a means of enhancing the land-revenue. It became necessary then to devise some plan of fairly assessing the land-revenue.—Now the process by which this is done is called in the Revenue language settlement"—*Baden Powell's Land System of British India Vol. I. pp 241—43.*

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"In India that portion of the produce of lands which goes to the ruling power as its share is called *revenue*, and the produce (in money or kind) received from the cultivators by the persons entitled to collect, as well as the collections made (in kind or money) by other intermediate holders of different grade from those who are above those persons that collect from the tenants, of the lowest grade up to those who pay the revenue to Government are called *rent*"—*per* Shambhunath Puudit J. in *Peezeer-ud-din v. Madho Sudhan*, 2 W. R. at p. 21 (*Civil Rulings*). As used in *Regulation 19 of 1793* "is not convertible with *rent*, though it comprises *rent*"—*per* Loch J. *ibi*; at p. 19;—*per* Peacock J. in *Mahammad Akil v. Asud-unissa Bibi*, 9 W. R. at pp. 56, 57; as used in *Cl. (d)*, S. 11, Sch. B. of Act 10, 1862 means revenue or rent whether to Government or to a zemindar—*Gopi Mohan Mazoomdar v. J. B. Mackintosh*, 9 W. R. at p. 396.

It was in Regulation 8 of 1793 that the term "revenue" was first substituted for rent and it was from this time that the terms "rent" and "revenue" are generally used with different meanings; "*revenue* being used to designate the sums paid by the zemindars &c. to Government and *rent* the sums paid by the ryots &c., to the zamindars"—See *Phillips Land Tenures of Lower Bengal*, T. L. L. 1875 p. 308—See "*Land-Revenue*"

Revenue Court—Defined, Act 3 of 1901, Cl. (8), S. 4; Act 14, 1882, S. 4 A. (2) (inserted, Act 7, 1888, S. 3); Act 16, 1887, S. 4 (11),

Revenue-free—Defined, Act 3, 1901, S. 4 (10); Act 17, 1876, S. 2.

Revenue officer—Defined, Act 10, 1876, S. 3; Act 18, 1879, S. 3; Act 9, 1883, S. 3; Act 8, 1885, S. 3; Act 16, 1887, S. 4 (14); Act 17, 1887, S. 3 (12); Act 3, 1901, S. 4 (9); Act 9, 1898, S. 2 (9); Act 2, 1876, S. 3; Act 2, 1880, S. 2; Act 1, 1872, S. 175

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Explanation (amended, Act 3, 1887); Act 17, 1876, S. 2; Bomb. Act 5, 1879, S. 3 (1); Mad. Act 1, 1884, S. 3 (j) (amended Mad. Act 2 1892, S. 3):

Reverse or alter—With reference to the words “reverse or alter” as used in *Cl. 2, S. 423 of the Criminal Procedure Code (Act 5 of 1898)* Benson *J.* remarks: “Reverse evidently means ‘to set aside’, but it is difficult to see what further action the word ‘alter’ is intended to indicate unless it be the substitution of a finding of ‘guilty’ for ‘not guilty’ or *vice versa*”—*Emperor v. Edward William Smithes*, *1. L. R. 26 Mad. at p. 15*:

Reverse the finding and sentence—As used in *Cl. 1 (b) of S. 423 of the Criminal Procedure Code* mean “reverse the finding upon which a conviction is based, and do not empower the appellate tribunal to reverse or set aside an acquittal”—*Sami Ayyar v. Emperor*, *1. L. R. 26 Mad. 478*.

Reversed—As used in *Beng. Act 8 of 1869, ss. 52, 54*, see *Pattarg Sircar v. Maharani Surnomoyee*, *24 W. R. 185*.

Reversioner—As used in *art. 140 Limitation Act* “means one who has a ‘reversion’ in the strict sense of the English law, viz., ‘that portion left of an estate after a grant of particular portion of it, short of the whole estate, has been made by the owner to another person’”—*Roda Hira and others v. Harnam and others*, *P. R. 1895, No. 18*; see *Sawan Singh v. Nihal Singh and others* *P. R. 1885, No. 48*; *Bala v. Jati and others*, *P. R. 1883, No. 155*.

Review of Judgment—“The expression “review of judgment” (as used in *Sch. II, Art. 179, Cl. 3 of the Limitation Act*) is not defined anywhere in the *Limitation Act*, and evidently the Legislature used that expression in the *Limitation Act* in the sense in which it is used in the *Code of Civil Procedure*. Now in the *Code of Civil Procedure*, on referring to *ss. 623 and 624*,

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I find that the expression 'review of judgment' is used interchangeably with the expression 'review of decree', that is an amendment of the decree that does not necessitate any alteration in the judgment"—*per Banerjee J. in Kali Prasunno Basu Roy v. Lalmohan Guha Roy*, 2 C. W. N. at p. 22.—See also the observations of Maclean C. J. *ibi*.

Revival of prosecution—As used in *Explanation 2 of S 87 of Act 4 of 1877 (Presidency Magistrate)* see *The Empress v. Chunder Nath Dutt*, I. L. R. 5 Cal. 121.

Right—As used in S. 269 of the *Code of Civil Procedure* "means right to present possession"—*Rango Vithal v. Rikhhivadas bin Raja Chand*, 11 B. H. C. R. 174; as used in S. 3 of Act 23 of 1871 (*Pensions Act*) "is equivalent to the word *ḥak* in its restricted sense of 'allowance' or 'fee'"—*per Melvill J. in Parbhu Das Rajaji v. Motiram Kalian Das* I. L. R. 1 Bom. 203 at p. 142. "It may be difficult, perhaps to define precisely the scope of the word 'right', but I think it was here (*S. 13 Evidence Act*) intended to include those properties only of an incorporeal nature, which in legal phraseology are generally called 'rights' more especially as it is used in conjunction with the word 'custom'"—*per Garth C. J. in Gujju Lal v. Fateh Lal*, I. L. R. 6 Cal. at p. 186—it "includes not only incorporeal rights but a right of ownership"—*per Edge C. J. (Tyrell J. concurring) in The Collector of Gorakhpur v. Palakdhari Singh*, I. L. R. 12 All. at p. 18; *per Sargent C. J. and Nanabhai Haridas J. in Ranchoddas Kishnadas v. Bapu Narhar*, I. L. R. 10 Bom. at p. 442. See also *Lakshman v. Amrit*, I. L. R. 24 Bom. 591 at p. 599.

Right to property—See *Makhan and others v. Gokul and others*, P. R. 1885, No. 32.

Right to sue—As used in *S. 361, Civil Procedure Code* see *Sham Chand Giri v. Bhayaram Panday, I. L. R. 22 Cal. at p. 98.*

Right to sue for damages—As used in *S. 266 Cl. (e), Civil Procedure Code (1877)*, see *Shyam Chand Koondoo v. The Land Mortgage Bank of India Ltd. I. L. R. 9 Cal. 695.*

Risk note—*Risk note* "is a document purporting to limit the responsibility of the East Indian Railway Company for the loss, destruction or deterioration of goods delivered to the said Company to be carried by Railway"—*E. I. R. Co. v. Bunyad Ali I. L. R. 18 All. at p. 43.*

River—Defined, *Act 7, 1878 S. 2; Act 15, 1879, S. 2; Act 19, 1881, S. 3.* "A running stream of water arising at its source by the operation of natural law and by the same law pursuing over the earth's surface a certain direction in a defined channel, being bounded on either side by banks, shores or walls until it discharges itself into the sea, a lake or a marsh"—*per Parsons and Ranade J. J., In re Maharaja Shri Jaswant Singji, I. L. R. 22 Bom. at p. 993.* The elements which go to constitute a river are: "That it has a perennial source, a bed and well-defined bank on either side, water flows in it for a part of the year and it discharges itself in a continuous flow into another river"—*per Knox and Banerji J. J. in Balbir Singh and another v. The Secretary of State for India in Council, All. W. N. 1899, p. 194—See "Stream"*

Road—Defined *Act 11, 1886, S. 3 (2).* As used in *S. 32 of Bengal Municipal Act (5 of 1876)* "does not include the soil beneath the road"—*per O'Kinealy and Agnew J. J. in Chairman of the Narhati Municipality v. Kishori Lal Goswami, I. L. R. 13 Cal. 171; as used in Cl. 5 of S. 217 of Bengal Act 3 of 1884 "is not limited to roads vested in the Municipal Commissioners"—*

per Macpherson and Banerjee *J. J.* in *Ramchandra Ghose v. The Bally Municipality*, *I. L. R.* 17 *Cal.* 684. See 'Public Road.'

Road authority—Defined, *Act* 11, 1886, *S.* 3 (2).

Rolling stock—Defined, *Act* 9, 1890, *S.* 3 (10).

Rubbish—Defined, *Beng. Act* 3 of 1899, *S.* 3 (41); *Ben. Act* 5, 1876, *S.* 6 (16); *Beng. Act* 3, 1884, *S.* 6 (14); *Beng. Act* 2, 1886, *S.* 3.

Rule—Defined, *Act* 10, 1897, *S.* (47); *Act* 20, 1891 *S.* 3 (9).

Rules and rule—Defined, *Act* 20, 1891, *S.* 3 (9).

Ryots—See "Raiyat"

Sailing—"There can be no *sailing* without a clear intention on the part of the master to proceed directly on his voyage. Any obstacle which was foreseen and which would cause delay in getting the vessel to sea would postpone the time of *sailing* until the obstacle was removed"—*per* Mathew *J.* in *See Insurance Co. v. Bloff*, [1898], 1 *Q. B.* pp. 29, 30. This view was confirmed by the Court of Appeal, see [198] 2 *Q. B.* 398 *A. C.*

Sajjadanashin—Literally one who sits on the prayer mat. Amir Ali *J.* observes: "These *dervishes* professed esoteric doctrines and distinct system of initiation. They were either *sufis* or the disciples of Miyan Roushan Bayezid, who flourished about the time of Akbar, and who had founded an independent esoteric brotherhood in which the chief occupied a peculiarly distinctive position. They called themselves *fakirs* on the hypothesis that they had abjured the world, and were humble servitors of God; by their followers they were honoured with the title of Shah or King." "The preceptor is called the *pir*, the disciple the *murid*. On

the death of the *pir* his successor assumes the privilege of initiating the disciple into the mysteries of *dervishism* or *sufism*. This privilege of initiation, of making *murids*, of imparting to them spiritual knowledge, is one of the functions which the *saj-jadanashin* performs or is supposed to perform." "He is not only a *mutwalli*, but also a spiritual preceptor. He is the curator of the *durgah* where his ancestor is buried, and in him is supposed to continue the spiritual line."—*Piran v. Abdool Karim* I. L. R. 19, Cal. at pp. 220, 221—see also *Mohi-ud din v. Sayid-ud-din* I. L. R. 20, Cal. 810 and *The Secretary of State for India in Council v. Mohi-ud-din Ahmad*. I. L. R. 27 Cal. 674 in which the observations cited above were referred to with approval.

Salary—Defined, *Act 2*, 1886 S. 3, *Mad. Act 1*, 1884, S. 3 (97; *Mad. Act 4*, 1884, S. 3 (x))—See *Raoji Moreshwar v. Savajirao Ganpatrao* I. L. R. 13 Bom. 677.

Sale—Defined, *Act 4*, 1882, S. 54; *Act 9*, 1872, S. 77; *Mad. Act 3*, 1867 S. 2; *Mad. Act 1*, 1886, S. 3 (14).

Saleable property—"The share of a partner in a partnership transaction is a *saleable property* within the meaning of S. 266 of the *Civil Procedure Code*"—*per Macpherson and Beverley JJ.* in *Jagut Chander Roy v. Ishwar Chunder Roy*, I. L. R. 20, Cal. 693; as used in S. 273 of the *Civil Procedure Code*, see *Gopal Nanashet v. Johari Mal and Dada Balshet v. Johar Mal* I. L. R. 11 Bom. at p. 524.

Saltpetre—Defined, *Act 12*, 1882, S. 3; *Mad. Act 4*, 1889, S. 3 (e); *Reg. 3*, 1889 S. 23 (l).

Salt-revenue officer—Defined, *Act 12*, 1882, S. 3, *Bom. Act 2*, 1890, S. 3 (c).

Sankalp—See "Birt and Sankalp,"

Sapinda—As used in the *Hindu Law* “is to be determined by family relationship or the community of corporeal particles and not alone by the capacity of performing funeral rites. This view is adopted by the Privy Council and all the High Courts in India”—*Suba Singh v. Sarfraz Kuor*, *I. L. R.* 19 *All.* pp. 225 and 226—See also *Umel Bahadur v. Udoi Chand*, 6 *C. L. R.* 500, *S. C. I. L. R.* 6 *Cal.* 119; *Babu Lal v. Nanku Ram*, *I. L. R.* 22, *Cal.* at p. 345.

Sarai—Defined, *Act* 22, 1867, *S.* 2.

Saranjam—An assignment of lands or their revenue by the State for the support of troops—*Sheikh Sultan Sani v. Sheikh Ajmodin* 20 *I. A.* at p. 50.

Satisfied—As used in *S.* 2, *Act* 19 of 1843, see *Parsidh Narain Rai v. Sheikh Mohamel Shookool Huq*, 1, *N. W. P. H. C. R.*, 1869, p. 38; as used in *S.* 281, *Civil Procedure Code (Act* 14, 1882) see *Chandra Bhushan Gangopadhyaya v. Ram Kant Banerji*, *I. L. R.* 12 *Cal.* at p. 109.

Satisfied on the certificate—According to Prinsep and Amir Ali *JJ.* the expression “satisfied on the certificate” as used in *S.* 84 of the *Bengal Tenancy Act* (8 of 1885) means that the certificate is to be taken as conclusive evidence while according to Petheram *C. J.* it is not so conclusive—see *Goghun Mullah v. Ramesher Narain Mahta* *I. L. R.* 18, *Cal.* 272.

Sayer—See *Surendro Prasad Bhattacharji v. Kedar Nath Bhattacharji* *I. L. R.* 9, *Cal.* at p. 8.

Schedule—Defined, *Act* 10, 1897 *S.* 3 (48).

Scheduled Districts—Defined, *Act* 10, 1897 *S.* 3 (49); *Act* 14, 1874, *S.* 1, *Act* 15, 1874, *S.* 2. These are portions of the older Regulation Provinces, 1876, and also portions of the newer Non-Regulation Provinces.

Second in command—Defined, *Act 15, 1837 S. 3 (5)*; *Act 5, 1892 S. 2 (9)*; *Reg. 2, 1888, S. 2 (3)*.

Secretary—Defined, *Act 5, 1888, S. 4 (8)*; *Act 5, 1873, S. 3*; *Act 11, 1876, S. 3*; *Bom. Act 13, 1866, S. 6*. "A secretary is a mere servant. His position is that he is to do what he is told, and no person can assume that he has any authority to represent anything at all"—*per Lord Esher in Barnett v. South London Tramways Co. [1887], 18 Q. B. D. 817, referred to in, George White Church, Limited v. Cavanagh [1902] A. C. at p. 124.*

Section—Defined, *Act 10, 1897, S. 3 (50)*; *Act 1860, S. 50*; *Bom. Act 3, 1886, S. 3 (21)*; *Mad. Act 1, 1891, S. 3 (4)*; *N. and O. Act 1, 1887 S. 2 (5)*.

Security—Defined, *Act 7, 1889, S. 3 (2)*.

Selling liquor—As used in *S. 2 of the Abkari Act (Madras Act 3) of 1864* see *Q. E. v. Apparu I. L. R. 9 Mad. 141*.

Ser—Defined, *Act 22, 1881, S. 3*; *Act 12, 1893, S. 3 (m)*.

Servant—A tahsildar is not a servant within the meaning of *cl. 2, S. 1 of Act 14 of 1859—Oroon Chander Mundal v. Romanath Rukheet 10 W. R. 260.*

Servants of the Queen—Defined, *Act 45, 1860 S. 14*.

Service line—Defined, *Act 3, 1903, S. 2 (o)*.

Service privy—Defined, *Beng. Act 3, 1899, S. 3 (42)*.

Set off—As used in *S. 18, of the Presidency Small Cause Court Act 15 of 1882* "is not equivalent to debt"—*per Macpherson J. in Ramdeo v. Pekhiram I. L. R. 21, Cal. at p. 423.*—See *S. 111 of the Code of Civil Procedure (Act 14, 1882)*.

Settled raiyat—Defined, *Act 8, 1885, S. 20.*

Settlement—Defined, *Act 1, 1877, S. 3; Act 2, 1899, S. 2 (24); Act 3, 1901, S. 4 (11); Act 1, 1879, S. 3 (19).* As defined in *S. 3* of the *Indian Stamp Act* of 1879 “suggests the creation of a separate interest in favour of several persons who may have a legal or moral claim in the settler, or for whom he may desire to make a provision”—*Reference from the Board of Revenue I. L. R. 7 Mad. 349 F. B.*

The process by which the Government officials determine the amount of land-revenue payable is called settlement. As to how this was done in Hindoo times the following extract from the Fifth Report of the Select Committee of the House of Commons on the affairs of the East India Company with its appendices, Vol. II pp. 113, 114 will amply show:—“It is represented by the Board of Revenue, in their report in favour of the village system of rent that it was at least as old as the age of Manu; but if by this be meant that such a mode of settlement was in conformity to the general and settled practice of the Hindu Governments, the fact appears to be at variance with such information as the Committee have been able to collect in their enquiries upon the subject. The usual course pursued by them for the realization of their territorial revenue appears to have been to collect it from those having an interest in the cultivation of the soil, either in proprietary right or as tenants, through the medium of their own officers. They may have farmed out the revenues of a whole village or more to the head inhabitants on terms of specific contract; but when this occurred this Committee believe it to have been a deviation from the general rule. In the latter periods of the Mahomedan dominion the system of farming the revenues by degrees came into very general use; and to this, it is believed, may be traced the origin of most of the zemidars in the Bengal Provinces and in the Northern Circars. They were as it is now

pretty clearly ascertained, in general no other than the revenue servants of districts or sub-divisions of a province; who as the Committee have formerly explained, were obliged by the conditions on which they held their office to account for the collections they made, or the share of the crop they received from the rayots, to the governing power in whose service they were employed; and for which service they were in the enjoyment of certain remuneratory advantages, regulated on the principle of a percentage or commission on the revenues within the limits of their local charge; but having, in the process of time and during periods of revolution or of weakness in the sovereign authority, acquired an influence and ascendancy which it is difficult to keep within the confines of official duty, it was found convenient to treat with them as contractors for the revenues of their respective districts; that is, they were allowed, on stipulating to pay the State a certain sum for such advantage for a given period, to appropriate the revenues to their own use and profit: the amount of the sum for which they engaged depended on the relative strength or weakness of the parties; the ability of the government to enforce or of the zemindar to resist. In this situation of things, the practice of sub-renting naturally ensued and the detail of the farmingsystem would extend itself to several villages. In the Carnatic territory, where large tracts were leased by the Nabab Mahomad Ally to individuals for a greater or a lesser number of years under engagements entered into at the seat of his residency, it was found on that territory being annexed to the British possessions, that the revenues of each village were generally sub rented to the *potails*. But in the districts ceded by the Nizam and in Mysore country, which also passed from the rule of Mahammadan Princes to that of the East India Company, sub-renting by villages was by no means universal; though it existed to a considerable extent. Whole districts were still under *ryotwar* rents; rents not farmed to the *potails* of villages,

but which were collected by the *potails* in the name and for the use of Government, in their natural and constitutional character, as the agents or superintendents of the villages to which they belonged agreeably to the ancient practice of the Hindoos; and as your Committee may add, according to the institutions of their native rulers, for according to those institutions as, they have been explained in a foregoing part of this Report, the *potail* in the character above-mentioned, and also the *curnum* or village accountant has from the earliest times, been in the possession of a rent-free portion of land, and in the enjoyment of regular and established perquisites attached to their offices"—Coming down to the Mahammadan times Akbar's ten years settlement (the first general settlement for any longer period than a year of which there is any record, made in 1582) known as Todar Mull's settlement was the most important. It was the model of all modern settlements of revenue. Although it was made with the ryots and zemindars were ignored, it is from the date of that settlement that the modern history of the revenue commences. Henceforth the *assul* or original rate imposed by Akbar is the standard of all modern assessments. Sir George Campbell (in *Thakoorani Dossee v. Bisheshher Mookerji*, *B. L. R. Sup. Vol. pp. 245 to 247*) thus observes: "There can be no doubt that the settlement attributed to Toran Mull (Todar Mull), like all the settlements of Akbar and his successors, and indeed all the detailed settlements of the British Government founded upon the same system, dealt primarily with the individual ryot, and fixed the sum payable by him for the land which he cultivated. It appears that the average produce of the *beegah* of land of each description was ascertained and the Government share was then calculated, one-third being the full demand, and deductions being made for fallows, occasional inundations and draughts, inferior soil's &c. The average dues of the State in grain, being thus ascertained, the grain rates were commuted into money on an average of the price current

of the nineteen previous years, and the rates so obtained were calculated on the land of each ryot. The option of paying in kind according to the established proportion seems however to have been maintained. Thus the payments of the ryots were fixed by an act of State quite independent of the will of any other subject or of any question of competition or relation of landlord and tenant in the English sense. Whether the revenue was paid direct to the officers of Government, or by the village communities jointly through their headman or through hereditary zemindars of a superior grade, the *quota* due from each ryot was fixed and recorded; that was the unit of the whole system from which all calculations started. The headmen and zemindars were remunerated for their services, or received the hereditary dues to which prescription entitled them, in the shape either of percentages on the collections from the ryots, or of 'Nankar' land held exempt from revenue. That is clearly the old law of the country in general and of Bengal in particular. Even when in the decline of Governments the State control became relaxed, and the ryots became subject to much oppression on the part of those placed over them, they still had some protection in the only ever-surviving law of the East 'Custom'. The old established rates they have always continued to cling as sanctioned by custom. That custom the worst oppressors could not openly defy and hence all extortions and imposts took the shape of extra cesses levied on various pretexts. Even when thus by oppressions the sum levied may have been raised up to or even beyond a rack-rent, the remark of Mr. Mill seems irresistible, that the shape in which they were taken, and the survival beneath all imposts of the old customary rates, is the strongest evidence that the right of the ryot survives to become again beneficial in better times." The History of the revenue system of Bengal during the British period up to the *Permanent Settlement* may be summarised thus: The first step after assuming direct charge of the dewanny

(which were granted by Meer Jaffir on the 12th August 1765) by the English was to make arrangements with respect to the revenue. This was done by Regulations passed on the 14th May 1772, providing for letting the revenue to farm, for five years; and also providing for the administration of justice in the provinces and the regulation and conduct of affairs at the Presidency. It was provided that the revenue should be farmed for five years, the farms to consist of entire *pergannahs* provided they did not yield more than a *lac* of rupees a year as revenue. The settlement came to an end in 1777 and the Court of Directors disapproving of leases for lives or in perpetuity directed an annual settlement. From 1777 to 1789 annual settlement was the rule with this important modification that the right of a zemindar already settled with to a renewal of settlement was gradually recognized. By the plan proposed for the settlement in 1784 under the orders of the Court of Directors it was provided (see *Colebrooke's Supplement* p. 234, 235, 236) that the zemindars should be *continued* in their leases 'so long as they paid the revenue with regularity and otherwise conducted themselves to the satisfaction of Government.' The statute 24 *Geo. III, C. 25, S. 29* provides that order should be given "for settling and establishing, upon principles of moderation and justice, according to the laws and constitution of India. the permanent rules by which the tributes, rents, and services of the rajas, zemindars, polygars, talookdars, and other native landholders should be in future rendered and paid." By the Regulations passed in 1887 it was provided that the sale of lands by Board for arrears of rent was only to be allowed under the special sanction of the Governor-General in Council and that the Board might authorize a zamindar to mortgage or sell the whole or part of his land directing the transaction to be registered by the Caonongoe. In 1790 the first rules for the *Decennial Settlement* were passed. This was preparatory to the *Permanent Settlement*

In fact when the Regulations for the *Decennial Settlement* were promulgated the Governor-General, Lord Cornwallis was authorized to declare that subject to the approval of the Directors in England the 'jumma' would remain fixed for ever." The proclamation of the permanency of the settlement was made on the 22nd March 1793 and finally *Regulation I* of 1793 was passed embodying the proclamation announcing the permanency of settlement and stands to this day as the Codified law on the subject.— "The Presidency of Bengal was the one which first necessitated legal steps with a view to providing for the distribution of territory. Madras never received any territory that was not naturally and conveniently attached. Bombay was also compact." "It was otherwise with Bengal." The "additions in 1801-3 to the North-West (*viz.*, the "ceded districts" i.e., ceded by the Nawab of Oudh in 1801, see "*North-Western Provinces*") would have extended the Presidency beyond all reasonable limits." The subject of territorial division was accordingly again dealt with in the year 1833, (3 and 4 Will IV Cap. 85). This *Act* proposed to divide the Presidency into two parts, to be called the Presidency of Fort William in Bengal and the Presidency of Agra "Though a Governor of Agra' was actually appointed, the scheme was early abandoned, and instead of forming a new Presidency, the North-Western Provinces were separated from the rest of Bengal and placed under a Lieutenant-Governor. This was ordered in 1836, and was legalized by the 5 and 6 Will IV Cap. 52 (1835)" Now of the five groups of territory comprising the North-Western Provinces (see *North-Western Provinces*) the District of Benares Province were brought under the Regulations and permanently settled by an extension of the Bengal Permanent Settlement Regulations. The first step towards the settlement of the ceded and conquered districts of the North-Western Provinces (see *North-Western Provinces*) was taken by issuing proclamations in 1802 and 1805 to the effect that "a first

settlement would be made for three years at the existing revenue rates : on the conclusion of that another three years' period would follow, at a rate which might be enhanced with reference to the difference between the old revenue total and the actual yearly produce of the land. A third settlement would be then made for four years at a further enhanced rate, while at the conclusion of the ten years thus accounted for, a permanent settlement would be concluded *for such lands as should be in a sufficiently improved state of cultivation to warrant the measure.*" The declaration was however qualified by the Government by saying that the "promise of a permanent settlement should be taken subject to the sanction of the Home authorities." The Home authorities refused sanction and *Regulation* 7 of 1822 and 9 of 1833 were passed embodying the forms of new settlement system. The first Regular Settlement under the *Regulation* 7 of 1822 and 9 of 1833 were made between 1833 and 1849 for a term of thirty years except in a few districts where, for special reasons the term was reduced. In 1873 the *Land Revenue Act* (*Act* 19) now amended by the *N. W. P. and Oudh, Land Revenue Act* 3 of 1901 was passed and under it and the rules framed pursuant thereto settlements are now made or revised.

In Madras the Settlement Department was first organized in 1858. The nature of Settlement is what is termed the *Raiyatwari Settlement*.

In Bombay also there is a raiyatwari settlement. The law relating to this system in Bombay is codified in *Bombay Act* 5 of 1879.

In the Central Provinces the *Land Revenue Act* (18 of 1881) as amended by *Act* 16 of 1889 empowers the Government to notify that a *revenue survey* is to be made in any local area.

In Punjab a Land Revenue Act (33 of 1871) was in force for 1871—87. In 1887, a revision of the *Land Revenue and Tenancy Act* was completed, the law now being Act 17 of 1887 for Land Revenue Administration and the Tenant Law being Act 16 of the same year.

Maljuzari settlement—In Central Provinces the Government conferred proprietary right in each village on a person called the *maljuzar*; this settlement is therefore often spoken of as the *maljuzari settlement*. *Baden Powell's Land System of British India*, Vol. I p. 245.

Permanent settlement—Defined, Act 8, 1885, S. (12)—In Bengal the process of fixing the revenue-payment was gone through once for all under a pledge that no future increase would be demanded. This was called the *permanent settlement*,—*Ibi*. Vol. I. p. 243.

Raiyatwari settlement—Whenever the system of settlement assesses each field separately (as in Bombay, Madras and part of the Central Provinces and in Berar) we have a *Raiyatwari Settlement*—*Ibi*. Vol. I p. 245.

Taluqadari settlement—The non-permanent settlement under peculiar conditions with the great Talookdar landlords of Oudh is called the *Taluqadari settlement*—*Ibi* Vol. I p. 244.

Village settlement—When it is a single village (or some part or parts of villages) settled with a landlord body or community it is called a *village settlement*. And as this system is prevalent in North Western India (and the Central Provinces) it is frequently spoken of as the *North West System*—*Ibi*. Vol. I p. 244—45.

Zamindari settlement—According to the system in force, the revenue is either assessed in a lump sum on a whole estate—

which may be a considerable area, or a whole group of villages, or a single village (or part of a village), or it is assessed on single fields or holdings surveyed, numbered, and marked out on the ground. When the estate is in the hands of a great landlord, like the zamindar of Bengal or North Madras it is called a *zamindari settlement*—*Ibi Vol. I. p. 244.*

Sewage—Defined *Beng. Act 3, 1899, S. 3 (43)*; *Act 17, 1884, S. 2* (ins. *Act 21, 1891, S. 1*); *Beng. Act 3, 1884, S. 6 (17)*; *Beng. Act 2, 1888, S. 3*; *N. and O. Act 5, 1894, S. 3 (5).*

Shakhs Gair—As used in the pre-emption clause of a *wajib-ul-arz*, see *Ali Jan v. Pheku, All W. N. 1895 p. 9.*

Shall—"There is no doubt that in some cases the word 'must or the word 'shall' may be substituted for word 'may', but that can be done only for the purpose of giving effect to the intention of the Legislature"—*per Sir B. Peacock in Delhi and London Bank v. Orchard, I. L. R. 2 Cal. at p. 57.*—As used in *S. 646 B. of the Civil Procedure Code (Act 14, 1882)* "is not mandatory but directory"—*per Straight and Mahmood JJ. in Madun Gopal v. Bhagwan Das, I. L. R. 11 All. 304*; as used in *S. 15 of the Civil Procedure Code (Act 10, 1877)* "is imperative"—*per Petheram C. J. in Nidhi Lal v. Mazhar Husain, I. L. R. 7 All. 230.* As used in *ss. 11 and 12 of Act 48 of 1860* is mandatory—*per Jenkins C. J., Rustom J. Irani v. H. Kennedy, I. L. R. 26 Bom. at p. 408.*

Shall be liable—The term "shall be liable" "does not signify an absolute obligation"—*Omrita Nath Mittar v. Administrator General of Bengal, I. L. R. 25 Cal. 63 and 64.*

Shall not—While in cases of affirmative words, even the word 'shall' might be taken to be only *directory* as distinguished from *imperative*, in case of negative words as the words *shall not* which occur in *S. 564 of the Code of Civil Procedure (Act 14, 1882)*

the proper rule is to take them as prohibitory, and as such, rendering illegal that which is done in contravention of such prohibition"—*Ramesher Singh v. Sheo Din Singh*, *I. L. R.* 12 *All.* at p. 521 *F. B.*

Shall presume—Defined, *Act 1*, 1872, *S. 3*.

Shall think fit—The trustee under a will was directed by the testator to invest the proceeds of the trust property upon such stocks, funds and securities as "he shall think fit."—It was held that the words 'shall think fit' meant *shall honestly think fit*—*per Kekewich J.* in *In re Smith v. Thompson* [1896] 1 *Ch.* at p. 76.

Shamilat land—Means "recorded common land of all the co-parcenary body"—*per* *Straight and Tyrrel JJ.*, *Hira Lal v. Bhairon*, *I. L. R.* 5 *All.* at p. 605.

Shan state—Defined, *Act 16*, 188, *S. 2*; *Act 13*, 1898, *S. 3 (e)*; *Act 6*, 1900, *S. 2 (e)*.

Share—Defined, *Act 4*, 1900, *S. 2 (b)*; *Act 2*, 1876, *S. 3*.

Share-holders—Defined *Act 11*, 1876, *S. 3*. See "*Hissedar*"

Shikmi sharik—See *Moulvi Ilahi Bux v. Kaki and Mali*, *P. R.* 1895, *No.* 87.

Ship—Defined, *Act 12*, 1886, *S. 3 (5)*; *Act 1*, 1887, *S. 3 (7)*; *Act 8*, 1899, *S. 2 (f)*; *Act 10*, 1897, *S. 3 (51)*; *Act 10*, 1889 *Sch. 1, Pt. 2, Explanation 1 (a)*; *Act 10*, 1887, *S. 5 (1)*; *Act 5*, 1883, *S. 3*; *Act 7*, 1880, *S. 2*; 57-8 *V. C.* 60, *S. 742*; 41-2 *V. C.* 73, *S. 7*; 33-4 *V. C.* 90, *S. 30*.

Shipment at monthly intervals—Means an interval of one month between each shipment"—*per* *Muttusami Ayyar and Best JJ.*, *Volkart Brothers v. Rutnavelu Chetti*, *I. L. R.* 18 *Mad.* at p. 69.

Shipment at seller's option during August-September—

The words "Shipment &c." occurring in a contract "do not mean that the seller has an optional period of two separate months in which he can deliver, but they merely refer to the character of delivery"—*per* Amir Ali J. in *Mackertich v. Nobo Coomar*, I. L. R. 30 Cal. 477.

Show cause—The expression "show cause" as used in para. 2 of S. 244 of the *Dekhan Agriculturists' Relief Act* 17 of 1879 "means to allege and prove sufficient cause and not simply to object"—*per* Sargent C. J. and Fulton J., *Rajmal Moti Ram Marwadi v. Krishna valad Mahipat Hegadekar*, I. L. R. 20 Bom. 208.

Shown—As used in S. 526, *Civil Procedure Code* (Act 14, 1882) "is not equivalent to *alleged*"—*per* Edge C. J. and Banerji J. in *Jagarnath v. Man nu Lal*, I. L. R. 16 All. at p. 234.

Shurkayan and ekjaddi—The words "shurkayan and ekjaddi" occurring in a *wajib-ul-arz* were held to apply to "sharers in the sense of proprietors in the village and not merely to relatives or sharers in a joint family"—*per* T. W. Smyth and Roe JJ. in *Devi Das v. Mohkam Din*, P. R. 1885 No. 69.

Sign—Defined, *Act* 10, 1897, S. 3 (52); *Act* 1. 1887, S. 3 (12); *Act* 6, 1901, S. 2 (r); *Act* 6, 1886, S. 3; *Mad. Act* 1, 1891, S. 3 (29); *N. and O. Act* 1, 1887, S. 2 (31).

Signature—Defined, *Act* 3, 1877, S. 3; *Act* 6, 1901, S. 2 (r).

Signed—Defined, *Act* 14, 1882, S. 2; *Act* 22, 1886, S. 3 (15); *Act* 1, 1869, S. 2; *Act* 8, 1885, S. 3; *Act* 15, 1877, S. 19; *Act* 3, 1877, S. 3;

As used in S. 59 of the *Transfer of Property Act* does not necessarily imply a signature by the mortgagor in person—*Deo Narain Rai v. Kookar Bind*, All. W. N. 1902 p. 127: S. C.

I. L. R. 24 *All.* 319 *F. B.* (Aikman *J. dissenting*); as used in *S.* 19 of the *Limitation Act* see *Gangadhar Rao Venkutesh and others v. Shedramapa Balapa Desai and another*, *I. L. R.* 18 *Bom.* 586.

Signing otherwise than a witness—The expression “signing &c.” as used in *S.* 61 of the *Stamp Act* (1 of 1879) “means the writing of a person’s name by himself or by his authority with the intention of authenticating a document as being that of the person whose name is so written. An ordinary agent authorized to sign on behalf of his principal would fall under this description, and consequently within the proviso of the section”—*per* Prinsep and Hill *JJ.* in *Q. E. v. Khetar Mohan Choudhary*, *I. L. R.* 27 *Cal.* 324.

Simple mortgage—Defined, *Act* 4, 1882, *S.* 58 (b).

Single bond—“Means a simple bond without alternative conditions or penalty attached—an absolute engagement in writing for the payment of money”—*Gurditta Mal v. Pal Singh and others*, *P. R.* 1892, *No.* 26.

Sir—Defined, *Act* 18, 1881, *S.* 4; *Act* 9, 1883, *S.* 3; *Act* 3, 1901, *S.* 4 (12).

Sketch—Defined, *Act* 15, 1889, *S.* 2 (5); 52-3 *V. C.* 52, *S.* 8.

Slaughter house—*Beng. Act* 3, 1899, *S.* 3 (45); *Ben. Act* 2, 1888, *S.* 3.

Small Cause—Defined, *Act* 6, 1900, *S.* 2 (f); *Act* 18, 1884, *S.* 3.

Small Cause Court—Defined, *Act* 15, 1882, *S.* 4; *Act* 9, 1887, *S.* 4; *Act* 7, 1892, *S.* 2 (4); *Bom. Act* 3, 1888, *S.* 3 (l).

So far as it relates to the suit—As used in *S.* 375 of the *Code of Civil Procedure* (*Act* 14 of 1882) “must be restricted to relief which the Court could have given in the suit, and will not

embrace reliefs which could only have been given in a suit based upon a different cause of action"—*per* Collins C. J. and Parker J. in *Venkatappa Nayanim v. Thimm Nayanim*, I. L. R. 18 Mad. 410 at p. 414.

So far as may be—As used in the second clause of the first paragraph of S. 532 of the *Code of Civil Procedure* "must be construed as meaning so far as may be necessary to carry into effect the remedies contemplated by Chap. XXI"—*per* Petheram C. J. in *Narain Das v. Lijja Ram*, I. L. R. 7 All. 693.

So far as they are consistent with—As used in S. 524 of the *Civil Procedure Code* see *Bala Putabhirama Chetti v. Sutharama Chetti*, I. L. R. 18 Mad. 492.

Soldier—Defined, Act 5, 1869, 1 *Interpretation clause*, Act 12, 1894, S. 4 (8); Act 14, 1873, S. 2; Act 2, 1874, S. 3. As used in S. 14 of Act 3 of 1880 does not include a Sub-conductor in the Commissariat Department—*per* Oldfield and Straight JJ., *Empress of India v. Desabhoy Framji*, I. L. R. 3. All. 214.

Solemnize—As used in the *Indian Christian Marriage Act* (15 of 1872) 1 S. 68 "is equivalent to conduct, celebrate or perform"—*per* Subramania Ayyar and Davies JJ., *Q. E. v. Paul and others*, I. L. R. 20 Mad. 12 at p. 16.

Son—Defined, Act 10, 1897, S. 3 (53); Act 10, 1865, S. 87; Act 1, 1869, S. 21; Act 21, 1870, S. 6; Mad. Act 1, 1891, S. 3 (30); N. and O. Act 1, 1887, S. 2 (32). As used in the *Mitakshra*, Chap. II. ss. 4, 7 and 5 "does not include grandsons"—*per* Turner C. J. and Kendersley J. in *Suraya v. Lakshmina Rasamma*, I. L. R. 5 Mad. 291; does include grandsons—*per* Burkitt and Chamier JJ., *Kalian Rai v. Ram Chander*, I. L. R. 24 All. at p. 134; as used in Chap. 4, S. 10, of the *Mayukha* see *Manilal Reradatt v. Bai Reva*, I. L. R. 17 Bom. 758.

Sonton!(सन्तान)—The term *son-ton* “bears the wider and more general meaning of issue and is not confined to male progeny—*Harish Chander Choudhari v Chander monee Debee*, 24 W. R 268.

Special agreement—Defined, *Act 22, 1886, S. 71.*

Special law—Defined, *Act 45, 1860, S. 41.*

Special meeting—Defined, *Act 11, 1876, S. 3.*

Special resolution—Defined, *Act 11, 1876, S.3; Act 6, 1882, S. 77.*

Specific—See *Greender Chander Ghose v. Mackintosh*, 4 C. L. R. at p. 218—“Whatever else ‘specific’ means, it must mean something segregated or distinguished from the generality”—*per Kekewich J. In re Huddleston Bruno v. Eyston* [1894] 3 Ch. D. 601—“applied to property in one’s possession is meaningless. In addition to its medical, natural history, and technical meanings, Webster’s Dictionary defines it ‘as tending to specify or make particular, definite, limited, precise’. All property in possession” of an owner is in this sense specific, as well the corn in his barn as the horse in his stable. Lawyers use the words ‘specific property’ in a different sense, viz. as equivalent to property of which you may demand the delivery in *specie*”—*per Farran J. in Esso Bhayaji v. The S. S. Savitri*, I. L. R. 11 Bom. at p. 137.

Specific purpose—The words “specific purpose” as used in S. 10 of the *Limitation Act* (*Act 10 of 1871*) “were intended, as words of restriction, and they must mean *purpose which has been specified by the person who created the trust*. The word ‘specific’ in the Indian Act of Limitation does not correspond exactly to the word ‘express’ in the *English Act*”—*per Markby J. Kherodemoney Dossee v. Doorgamoney Dossee*, I. L. R. 4 Cal. at p. 470.

Specified Law—The expression “specified law” as used in *S. 584*, *Civil Procedure Code* means the Statute law”—*per* Petheram *C. J.* in *Nivath Singh v. Bhikki Singh and Bhikki Singh v. Nivath Singh*, *I. L. R.* 7 *ALL.* 653. This view was overruled by their Lordships of the *Privy Council* in *Ramgopal v. Shams Khatoon* (*I. L. R.* 20 *Cal.* 93 at *pp.* 99 and 100 *S. C.* 19 *I. A.* at *p.* 233) who held it to mean “specified in the memorandum of the grounds of appeal,” “law” being not “limited in its meaning to statute law”—*per* Sir Richard Couch; *Durga Choudharain v. Jawahir Singh Choudharain*, *I. L. R.* 18 *Cal.* 23: 17 *I. A.* 122.

Spirit—Defined, *Act 22, 1881, S. 3; Act 12, 1896, S. 3 (r); Mad. Act 1. 1886, S. 3 (8).*

“To constitute ‘spirits’, something beyond fermentation and the possession of intoxicating properties must be found. Toddy juice whether in a fermented or unfermented state is not spirits within the meaning of *Bombay Act 3 of 1872*”—*Hormoji Karseji v. W. G. Pedder*, 12 *B. H. C. R.* at *pp.* 204 and 205;

Spirituos liquor—Defined *Act 13, 1889, S. 3 (1) (c).*, *Ben. Act 7, 1877, S. 4.* The term “spirituous liquor” as used in *S. 53* of the *Excise Act (Bengal Act 7 of 1878)* is not intended to include a medicinal preparation merely because it is a liquid substance containing alcohol in its composition—*per* Macpherson and Banerjee *JJ.* in *Ganesh Chander Sikdar v. Q. E. I. L. R.* 24 *Cal.* 157.

The words “spirituous liquor,” “wine” and “intoxicating drugs” in *S. 14* of the *Bengal Excise Act (Bengal Act 3 of 1880)* “must be taken in their popular and ordinary meaning”—“Tari or “toddy” “is a spirituous liquor within the meaning of that section”—*per* Wilson and O’kinealy *JJ.* in *Q. E. v. Ram Dhan Passi*, *I. L. R.* 15 *Cal.* 452.

Spontaneous salt—It “is a salt which produced naturally requires no process of manufacture to render it suitable for human consumption”—*Anonymous I. L. R. 3 Mad. 17.*

Stamped—See *the Maharaja of Benares v. Debi Deyal, I. L. R. 3 All. 576.*

Standing timber—As used in *S. 3 of the Registration Act 1866*, see “Timber”

Station—Defined, *Ben. Act 5, 1876, S. 6 (20)*. See *In the matter of the petition of Ram Prasad v. Dirpal, I. L. R. 3 All. 744.*

Step in aid of execution—“An application in furtherance of an application to put a decree into execution may be held to be an application to enforce the decree”—*per Innes J. in Kunhi v. Sheshagiri, I. L. R. 5 Mad. 143*; “it may be some preliminary proceeding prior to actual execution”—*per Muthusami Ayyar J., Ibi. p. 144*; “an order of a Court is not a step in aid of execution unless it is made on the application of the judgment-creditor”—*per Field J. in Motendro Chandra Ghose v. Mohendro Nath Ghose, 10 C. L. R. 330*; *per Cunningham and O’Kinealy JJ. in Rajkumar v. Rajlakhi, I. L. R. 12 Cal. 441*; In deciding whether any particular act is or is not an application for, or step in aid of, execution, it is the nature of the act which must be looked to, and not the time at which it may be possible to do it”—*per Muttusami Ayyar and Best JJ. in Koormayya v. Krishnamma, I. L. R. 17 Mad. 165*. The expression “step in aid of execution” in *Act 15 of 1877, Sch. 11, Art. 179 (4)* “was intended to cover any application according to law in furtherance of the execution proceedings under a decree”—*Sujan Singh v. Hira Singh, I. L. R. 12 All. 399 F. B.* As for what applications have, and what have not been held to be steps in aid of execution, see *Starling’s Limitation Act* (edition 1900).

Stipulated period—The term “stipulated period” as used in *S. 8, Regulation 17 of 1806* “means the full term on the expiry of which the mortgage-money is payable, notwithstanding that under the strict terms of the mortgage, the mortgagee might be entitled to foreclose at an earlier period”—*per Aikman J. in Kubra Bibi v. Wajid Khan, I. L. R. 16 All. 59* see also *Srimati Sarasibala Debi v. Nand Lal Sen, 5 B. L. R. 389 (S. C. 13 W. R. 364)* referred to in the above.

Stock—Defined, *Act 27, 1866, S. 2; Act 11, 1876, S. 56.*

Strake—“Is a continuous line of planking or plates on a vessel’s side reaching from stem to stern”—*per Scott and Jardine JJ. in Q. E. v. Jameuddin valud Mahammad, I. L. R. 14 Bom. at p. 174.*

Stranger—As used in the Mahammadan Law of pre-emption “has no reference to any relationship arising from consanguinity or marriage. The word is correlative term to pre-emptor”—*per Mahmood J. in Fida Ali v. Mozaffar Ali, I. L. R. 5 All. at p. 67.*

Stream—“Necessarily means flowing water, and not water which oozes from a piece of marshy ground, and that unless water flows more or less in a channel and continuously it cannot be described as water that flows in streams leading to the ponds”—*per Lord Shand in M'Nale v. Robertson L. R. [1897] App. Cas. at p. 138; “a rivulet or course of running water and neither the spring nor the water soaking or percolating through a marshy ground can with propriety be termed stream”—per Lord Davey Ibi. at p. 141. But Lord Halsbury (disagreeing with the majority in the above case) holds: “Though it be true that the word ‘stream’ in its more usual application does point to a definite stream within defined banks, I do not think it is confined to that meaning. We speak of a stream of tears flowing from the eyes, and*

we speak of blood streaming from the veins. I think we may as well speak of 'streams' in the plural as meaning water passing over the superficies of a plane; we may call such a flow of water a stream: I think that the root idea is water in motion from one place to another as distinguished from stagnant water"—*Ibi.* at p. 143.

Street—Defined, *Act 17, 1884, S. 2; Act 19, 1884, S. 2; Act 1, 1886, S. 2; Act 18, 1889, S. 3 (3); Act 20, 1891, S. 3 (4); Act 3, 1903, S. 2 (p); Beng. Act 3, 1899, S. 3 (46); Act 5, 1857, S. 27; Act 22, 1883, S. 2; Act 11, 1890, S. 2 (2); Ben. Act 2, 1888, S. 3; Ben. Act 9, 1895, S. 2 (f); Bom. Act 6, 1873, S. 3; Bom. Act 3, 1888, S. 3. (w); Bom. Act 4, 1890, S. 3 (e).* The ordinary, popular and natural meaning of this word is "a place with contiguous houses on each side"—*per Blackburn J. in Pound v. Plumstead Board of Works, [1871] L. R. 7. Q. B. at p. 194* "a roadway with buildings on each side"—*per Lord Selbourne L. C. in Robinson v. Barton Board [1883,] 8 App. Cas. at p. 801.* As used in *S. 17 of the Bombay District Municipal Act (6 of 1873)* "means and includes not merely the bare surface of the ground, but so much above and below it as is requisite or appropriate for the preservation of the street for the usual and intended purposes"—*per West and Birdwood JJ. in Nagar Valub Narsi v. The Municipality of Dhandhuka, I. L. R. 12 Bom. at pp. 495, 496.*

Stri—As used in *Manu, Chap. VIII, verse 389* refers to a wife and does not include concubines—*per Subramania Ayyar and Benson JJ. in Ramnarasu v. Buchamma, I. L. R. 23 Mad, at p. 291.*

Struck off—Ordinarily means nothing more than struck off the file of the business pending in the Court"—*per Gopal Das v. Musammatt Golab Devi, P. R. 1897, No. 70 at p. 324.*

Sub-agent—Defined. *Act 9, 1872, S. 191.*

Sub-contractor—Defined, *Act 6, 1901, S. 2 (s); Act 1, 1882 S. 3.*

Sub-Division—Defined *Act 5, 1898, S. 4 (1) (u).*

Sub-Divisional Canal officer—Defined, *Act 8, 1873, S. 3.*

Subject—The words “distinct subjects” in *S. 17* of the Court Fees *Act 7 of 1870* mean distinct and separate causes of action or distinct kinds of relief—*Mulchand v. Shib Charan Lal, I. L. R. 2 All. 676; Chameli Rani v. Ram Dai, I. L. R. 1 All. 522 F. B.* Turner *J.* observing. “I am inclined to think that ‘distinct subjects’ mean distinct causes of action or distinct kinds of relief”; per *Burkitt J.* in Reference under the Court Fees *Act, I. L. R. 16 All. at p. 408.*

Subject matter—As used in *S. 373, Civil Procedure Code (Act 14, 1882)*, see *Gopal Chandra Banerji v. Pooran Chandra Banerji, 4 C. W. N. 110.*

Subject of the suit—As used in *S. 499* of the *Civil Procedure Code, (Act 14, 1882)* see *Dhoroney Dhar Ghose v. Radha Govind Kuor, I. L. R. 24 Cal. 117.*

Subject to a mortgage—As used in *S. 271* of *Act 8 of 1859*, see *Joy Chandra Ghose v. Ram Narain Poddar, 21 W. R. 43.*

Subject to payment—Where property is merely sold subject to a mortgage it is not sold ‘subject to payment’ of the mortgage within the meaning of *S. 24* of the *Stamp Act (1 of 1879)*—Reference under the *Stamp Act S. 49, I. L. R. 5 Mad. 18 F. B.*

Submission—Defined *Act 9, 1899, S. 4 (b).*

Subordinate—Defined, *Act 24, 1859, S. 1.* As used in *S. 437* of the *Criminal Procedure Code (Act 10, 1882)* see *Q. E. v. Laskari I. L. R. 7 All. 853.*

Subordinate Court—Defined, *Act 18, 1879, S. 3.*

Subordination—See the observations of Stuart C. J. on the subordination of the Revenue Courts to the High Court in *Empress v. Subsookh*, I. L. R. 2 All. 533.

Sub-section—Defined, Act 10, 1897, S. 3 (54).

Subsisting decree—The words “subsisting decree” as used in the proviso to S. 316 of the *Civil Procedure Code* (Act 14, 1882) “refer to a decree which is unreversed and in full force and not to a decree, the execution of which is not barred by limitation”—*per* Garth C. J. in *Mahammad Husain v. Kokil Singh*, I. L. R. 7 Cal. at p. 96; *Sarda Charan Chackerbutty v. Mohammad Isuf Mian* I. L. R. 11 Cal. 36 “not merely one upon which execution cannot be issued;—*per* Garth C. J. and McDonnell J., *In re Mahammud Husain*, 9 C. L. R. at p. 56.

Substantially—As used in S. 13 of the *Code of Civil Procedure* signifies “in effect, though not in express terms”—*per* Banerjee J. in *Kasiswar Mukhopadhyaya v. Mohendro Nath Bhaduri*, I. L. R. 25 Cal. at pp. 140, 141—See also the cases cited therein.

Substantial person—The words “substantial person” as used in Cl. 2, S. 8 of *Regulation 8* of 1819 “do not necessarily mean a wealthy man from whom damages could be recovered by the patnidar supposing the attesting to be false. Wealth is only an element in the position and status of a witness. His respectability must be looked at”—*Ram Saibak Bose v. Monmohini Dass*, 2. I. A. 71: S. C. 23 W. R. at p. 116.

Substantial question of law—The clause “substantial question of law” as used in S. 596 of the *Code of Civil Procedure* (Act. 14, 1882) does not mean “that the appeal necessarily depends on some question of law, but includes cases where, if the appeal be allowed, questions of law will be raised in the argument as well as questions of fact”—*per* Ghose J. in *Gopinath v. Goluck*

Chunder, I. L. R. 16 Cal. 292.—Their Lordships of the Privy Council have lately held that the question of law must be of great public or private importance. Lord Hobhouse remarked: "Their Lordships had found on previous occasions the existence of a substantial question of law had been supposed to give a right of appeal in the ordinary course of procedure under the Code" but "that was a mistake."

Succession—Defined, *Act 8, 1885, S. 3.*

Such award—As used in *Art. 16, Sch. II of the Limitation Act* see *Lachman v. Atma and others, P. R. 1883, No. 25.*

Such Court—The words "such court" as used in *S. 243 of the Code of Civil Procedure* "do not limit the exercise of the powers given by that section only to decrees passed by the Court in which the suit is pending"—*per Mahmood J. in Kassa Mal v. Gopi, I. L. R. 10 All. 389.*

Such debts and liabilities—The expression "such debts &c." as used in *Act 9 of 1886* "means debts and liabilities incurred to Government and includes every other debt or liability"—*per Pigot and Banerji JJ. in Kamesher Prasad v. Bhikham Narain Singh, I. L. R. 20 Cal. at p. 625.*

Such further or other relief—As used in *S. 539, Civil Procedure Code* see *Sajedur Raja Choudhari v. Gour Mohan Das Baishnav, I. L. R. 24 Cal. at p. 423,*

Such lottery—The term "such lottery" as used in para. of *S. 294 A. of the Indian Penal Code* "means any lottery not authorized by Government"—*per Nanabhai Haridas and Wedderburn JJ. in Q. E. v. Mancherje Kavasji Shapurji, I. L. R. 10 Bom. 97.*

Such offender—The words "such offender" as used in *S. 397, Indian Penal Code* "include any person who, though he may not have himself caused the grievous hurt, is nevertheless liable

for it by reason of S. 34"—per Strachey C. J., *Q. E. v. Mahalir Tewari* I. L. R. 21 All. at p. 265: S. C. All. W. N. 1899, at p. 77; they refer only to the person actually causing grievous hurt—per Banerji J. in *Emperor v. Ghisiawan*, [unreported, 1904].

Such woman—The words "such woman" as used in S. 498, *Indian Penal Code*, "do not mean such a woman as has been so enticed as mentioned in that section, but mean such woman whom the accused knows or has reason to believe to be the wife of any other man"—per Straight J. in *Q. E. v. Niadar* I. L. R. 10, All. 580.

Sudi (bearing interest)—The use of the term *sudi* (bearing interest) in a mortgage-deed was held not to imply a covenant to pay *post diem* interest, there being a specific agreement to repay the mortgage-debt, principal and interest, in seven years—*Bhikki Ram and another v. Sheo Parshan Ram and others*, I. L. R. 18 All. 316 (Edge C. J. and Blennerhasset J.)

Sue for—The expression "sue for" as used in S. 1 of Act 18 of 1848 "does not mean to *sue for and to obtain* so as to make the consent of the Governor a condition precedent to the institution of a suit"—per Nanabhai Haridas and Jardine JJ. in *Zia-ul-nissa Begam v. Moti Ram*, I. L. R. 12 Bom. at p. 498.

Sufficient cause—"We are not prepared to hold that a mistake in law is, under no circumstances a 'sufficient cause', within the meaning of S. 5 of the *Limitation Act*"—per Collins C. J. and Mathusami Ayyar in *Krishna v. Chethappan*, I. L. R. 13 Mad. 269; per Mahmood J. in *Bechi v. Ahsanullah Khan*, I. L. R. 12 All. 461; not so—per Straight and Mahmood JJ. in *Jag Lal v. Har Narain Singh*, I. L. R. 10 All. 524. "the phrase must be understood with due reference to the circumstances of each case"—per Mahmood J. in *Husaini Begam v.*

The Collector of Mozaffarpur, I. L. R. 9 All. at p. 17. "The presentation of an appeal to a wrong court under a *bona fide* mistake may be 'sufficient cause' within the meaning of S. 5 of the *Limitation Act*"—*per* Jardine and Ranade JJ. in *Dadabhai v. Maneksha, I. L. R. 21 Bom. 552.* "Poverty and the fact of the appellant being a *pardanashin* lady no 'sufficient cause'"—*Husaini Begam v. The Collector of Mozaffarpur (supra).* "Is evidently something more than 'legally sufficient', or 'sufficient according to the rules laid down in the law of limitation'; for if any case fell within these rules, it would be governed thereby, as in the case of suits, and there would be no scope for the application of section 5. 'Sufficient cause' seems to mean not only those circumstances (such as the Courts being closed, or time being spent in obtaining copies, or the party being a minor or insane) which the law expressly recognizes as extending the time but also such circumstances as are not expressly recognized but which may appear to the Court to be reasonable, looking to all the facts of the case"—*per* Benson J. in *Kichilappa Naicker v. Ramanayam Pillai, I. L. R. 25 Mad. at pp. 170, 171.*

As used in S. 327 of Act 8 of 1859 "should be 'taken to comprehend any substantial objection which appears on the face of the award or is founded on the misconduct of the arbitrator or on any miscarriage in the course of the proceedings or upon any other ground which would be considered fatal to an award on an application to the Courts in England'"—*Choudhari Mumtaz Husain v. Musammam Bibi Bechunnissa, 3 S. A. 209.* With reference to the words "sufficient cause as used in S. 368, *Civil Procedure Code* and other similar provisions of the Code "it cannot be laid down as a general proposition that ignorance of law can never be considered"—*Ghulam Shah and others v. Mallik Mozaffar Khan, P. R. 1886, No. 81 F. B.*

Sufficient grounds—As used in *S. 195 Criminal Procedure Code (Act 10, 1872)* see *In the matter of the petition of "Lachman v. Jwala I. L. R. 5 All. 162, 163.*

Sufficient plea—Non-compliance of direction as to the publication of notices referred to in *Cl. 3, S. 8 of Regulation 8 of 1819* is a *sufficient plea* within the meaning of *S. 14 of the Regulation*—*Surnomoyi Debia v. Grish Chander Moitra, I. L. R. 18 Cal. 363,*

Sufficient reason—Defined *Act 11, 1886, S. 43.* As used in *S. 623, Civil Procedure Code* "should receive a liberal construction; they should be construed so as to do substantial justice to the parties"—*per Norris J. in Gopal Chander Lahiri v. Solomon, I. L. R. 11 Cal. 767;* "must be one sufficient to the Court or the Judge before whom application for review is made subject probably to an appeal. Whether or not there is 'any other sufficient reason' may depend on a question of law, or upon a question of fact or upon a mixed question of law and fact"—*per Edge C. J. in Amir Hasan v. Ahmad Ali, I. L. R. 9 All. at p. 40.*

Sufficient time—"What may be *sufficient time* in a particular case can only be determined by considering the peculiar circumstances of the case"—*Khadar Bhi v. Rahman Bhi, 3 Mad. H. C. R. p. 167 (1867-68).*

Suit—Defined, *Act 22, 1886, S. 3 (2); Act 15, 1877, S. 3; Act 21, 1879, S. 19; Act 4, 1880, S. 2; Act 14, 1882, S. 582;* "Under certain circumstances, the word 'suit' includes not only the proceedings in the first Court, but the proceedings in appeal and up to final execution. It is doubtful whether the words 'pending the suit' in section 372 of the *Code of Civil Procedure* can be construed to mean at any time from the commencement of the suit until its final determination on appeal, if there is an appeal"—*per*

Edge C. J. and Burkitt J. in *The Collector of Mozaffarnagar v. Husaini Begam*, I. L. R. 18 All. at pp. 87, 88; as used in S. 647, *Civil Procedure Code*, see *Radha Charan v. Man Singh*, I. L. R. 12 All. 32; as used in S. 13 (*Civil Procedure Code*) "must be understood to mean such a matter as might have formed the subject of a separate suit independently of the special provisions of the *Civil Procedure Code*, such as S. 45 which enables the plaintiff to unite several causes of action in one and the same suit"—per Mahmood J. in *Sheoraj Rai v. Kashi Nath* I. L. R. 7 All. at p. 252; as used in S. 13 *Civil Procedure Code* "should be construed as including an appeal"—per Banerjee and Rampini JJ. in *Bharusi Lal Choudhary v. Sarat Chander Dass*, I. L. R. 23 Cal. at p. 419; as used in the last Cl. of S. 6 of the *Code of Civil Procedure (Act 14, 1882)* "is not limited to proceedings in the cause up to the passing of the decree"—per Beverley J. in *Gokul Kristo Chander v. Aukhil Chander Chatterji*, I. L. R. 16 Cal. at p. 461; as used in Act 9 of 1871 does not include applications—*Dhonesur Kuor v. Roy Gudar Sahay*, I. L. R. 2 Cal. 336 F.B.; as used in the last part of para. 2 of S. 11 of the *Court Fees Act* does not mean the entire suit; it means the claim in respect of the mesne profits"—per Beverley and Amir Ali JJ. in *Kewal Krishn Singh v. Sulchari*, I. L. R. 24 Cal. 173; per Sargent C. J. and Nanabhai Haridas J. in *Fulchand v. Ichcha*, I. L. R. 12 Bom. 98; as used in ss. 51 to 55 of *Bengal Act 9 of 1879* "is not limited to what is usually called a 'regular suit' but covers miscellaneous proceedings in a suit"—per O'Kinealy and Amir Ali JJ. in *Bhopendra Narain Dat v. Baroda Prasad Roy Choudhary*, I. L. R. 18 Cal. 500; as used in S. 4 of the *Pensions Act 23 of 1871* "does not include execution proceedings"—*Vajiram Bhagwan v. Ranchodji Gopalji*, I. L. R. 16 Bom. 731; as used in the last para. of S. 19 of Act 14 of 1877 "includes application for execution of a decree"—per Westropp C. J. and Birdwood J. in *Bhulji Bechar*

v. Bandaji Daji, I. L. R. 5 Bom, 448; per Mitter and Norris JJ. in *Jugmohan Mahto v. Luchmeshwar Singh*, I. L. R. 10 Cal. 748; as used in Act 8 of 1860, S. 102, see *Kristo Chander Chukerbutty v. Anand Coomar Dut*, 19 W. R. 307; as used in the proviso to S. 3 of Act 42 of 1860, see *Admulam Pillai v. Kovil Chinna Pillai*, 2 *Max. H. C. R.* 22 (1864-65); as used in S. 15 of Act 9. of 1871 see *Jivan Singh v. Sarnam Singh* I. L. R. 1 All. 97; as used in ss. 3, 12 or 47 of the *Dekhan Agriculturists' Relief Act* (17 of 1879) see *Mohan v. Tukaram*, I. L. R. 21 Bom. at p. 67; as used in S. 55 of the *Court of Wards. Act* (Beng. Act. 9 of 1879) "includes miscellaneous proceedings"—per O'Kinealy and Amir Ali JJ. in *Bhupendro Narain Dat v. Baroda Prasad Roy Choudhary*, I. L. R. 18 Cal. 500; as used in S. 15 of Act 9 of 1871, see *Bainee Kant Ghose v. Haran Kisto Ghose*, 24 W. R. 405; "includes all proceedings in a suit including the proceedings in execution"—per Anderson J. in *Price v. Golak Nath*, P. R. 1903, No. 39; is a term of wider signification than action—*E. L. E.*

Suit for land—"Where there is no question whatever between plaintiff and defendant as to the plaintiff's right to land, it is not a suit for land within the meaning of S. 12. of the Letters Patent of 1865"—per Phear J. in *East India Railway Co. v. The Bengal Coal. Co.*, I. L. R. 1 Cal. at p. 100—See *Land Mortgage Bank v. Suderuddin Ahmad*, I. L. R. 19 Cal. at p. 365; *His Highness Shremant Maharaj Yaswant Rav. Holkar v. Dadabhai Cursetji Ashburner*, I. L. R. 14 Bom. at p. 358; *Sorabji v. Rattonji*, I. L. R. 22 Bom. at pp. 706, 707; *Hara Lal Banerji v. Nitambini Debi*, I. L. R. 29 Cal. 315; *Delhi Bank v. Wordie*, 25 W. R. 272.

Suit for money—As used in S. 360 of the *Code of Civil Procedure* "is wider than a suit for debts"—per Wilson J. in *Digumberi Debi v. Aushotosh Banerji*, I. L. R. 17 Cal. 610.

Suit relating to a trust—As used in *Art. 18 of Sch. II of the Provincial Small Cause Court Act (9 of 1887)* see *Sundaramlingam Chetti v. Mariyappa Chetti, I. L. R., 26 Mad. 200.*

Suit to set aside an adoption—The expression “suit to set aside an adoption” as used in *Art. 129, Sch. II of Act 9 of 1871* “denotes any suit which brings the validity of adoption in question, and therefore includes a suit for possession dependant on that issue”—*per Lord Hobhouse in Jagdamba Choudharain v Dakhera Adheen Roy Choudhari 13 I. A. p. 84; Mina Konwari v. Juggut Setam 10 I. A. at p. 125; Ratnamasari v. Akil and Ammal, I. L. R. 26 Mad. 291.*

Summary—Sir R. Couch *C. J.* (in *Maharaja Dhiraj Mahtab Roy Bahadur v. Bacharam Hazra, 5 B. L. R. at p. 166*) observes: “It is very difficult to say what is meant by this word (summary) or to give a definition which would be applicable in all cases. As to its meaning as used in *S. 22 of Act 14 of 1859* see *Ibi.*”

Summons case—Defined, *Act 5, 1898, S. 4 (1) (V).*

Superintendent—Defined, *Act 6, 1901, S. 2 (t); Act 1, 1882, S. 3 Ben. Act 1, 1887, S. 2; Regn. 1, 1894, S. 10 (b); Regn. 5, 1896, S. 2, (1),*

Superintending Canal Officer—Defined, *Act 8, 1873, S. 3; Act 2, 1881 S. 2.*

Superior officer—Defined, *Act 12, 1894, S. 4 (7), Act 14, 1887 S. 2 (e); Act 15, 1887, S. 5 (2).*

Supply of water for domestic purposes—Defined, *Act 19, 1884, S. 2; N. and O. Act 1, 1891, S. 2 (f).*

Surplus—The words 'surplus and 'residue' have identical meanings; one meaning 'that which is over ' the other 'that which is left'—*per Pontifex J. in Dwarkanath Bysack v. Baroda Prasad Bysack, I. L. R. 4 Cal. at p. 449.*

Surprise—"The word 'surprise' is now seldom, if ever used in an English Court, and the use of it in ss. 28, *Cl. (c)* and 26, *Cl. (b)* may be taken as no more than a piece of abundant caution"—*Pollock's Law of Fraud in British India p. 74.*

Survey mark—Defined, *Act 17, 1887, S. 3 (17).*

Survey number—Defined, *Act 18, 1881, S. 4.*

Survivor—"Longest liver"—*per Riby L. J. in Parkworth In re Snaith v. Parkinson, [1899] 1 Ch. D. at p. 652.*

Swear—Defined, *Act 10, 1897, S. 3 (55); Act 1, 1888, S. 1.*

Tahsildar—Defined, *Regulation 1, 1894, S. 10 (h).*

Takes—"The term 'takes' is not used anywhere in the *Indian Penal Code* to connote 'keeping' in addition to 'taking'"—*Chanda and others v. Q. E., P. R. 1894, No. 6 (Cr.)*

Take into account—As used in *S. 308 Criminal Procedure Code* see *William Nicholes Love v. William John Hume Answorth Overseer to the Municipality at Howrah, 22 W. R. 336.*

Take such measures as may be deemed necessary—As used in *S. 73 of the Bombay District Municipal Act (6 of 1873)* "imply in themselves something actually to be done by the Municipality, rather than any limitation to be imposed on the private rights of the citizens in their relations of daily life"—*per Scott and Jardine JJ, in Q. E. v. Hari Lal, I. L. R. 14 Bom. 180.*

Taking into consideration—As used in S. 30 of the *Evidence Act* Blair *J.* observes:—"It is not perhaps necessary or easy to define precisely what is meant by these words, 'taking into consideration'. This, at all events, it must mean that they are not to have the force of sworn evidence"—*Nirmal Das v. Q. E. All. W. N.* 1900 at p. 170.

Talook or (taluk)—Defined, *Bom. Act* 1, 1834 S. 3 (4); *Mad. Act* 5, 1884, S. 3 (ii). It "imports a permanent tenure if there be nothing in the surrounding circumstances or in the instrument itself which creates the interest to show that it was intended to be otherwise"—*per* Markby and Romesh Chunder Mitter *JJ.* in *Krishno Chander Gupto v. Mir Safdar Ali*, 22 *W. R.* at p. 327; "when used without any sort of qualification and restriction it refers *prima facie* to a hereditary interest"—*per* Markby and Glover *JJ.* in *Khaja Ahsanullah v. Kali Mohan Mokerji*, 18 *W. R.* 469.

Taluqdar—Defined, *Act* 1, 1869, S. 2; *Act* 24, 1870, S. 2; *Bom. Act* 6, 1888, ss. 2 (1), (a), 2, (2).

"The term 'talūqdar,' cannot be defined exactly; because the holder of the state, as it now is, has had a various origin. We cannot, in all cases, say that he is a descendant and representatives of the old Hindu *Raj* who accepted a sanad and paid tribute to the Moghul Government, for that would meet many but not all cases. We cannot either say that a 'talūqdar' was a revenue officer of the state, converted into a superior proprietor, for that would only be true to a limited extent."—It would now be sufficient to say that a 'Taluqdar' "is a person whose name is entered in a list which under S. 8 of the *Oudh Estates Act* of 1869 is provided to be prepared; and that he possesses such rights as the Act specifies, and as sub-ist in conformity with other laws, securing the position of the village bodies and the

rights of tenants and long since made perfectly clear by the records of settlement." They are either :—

“(1) Pure descendants and representatives of the old Hindu *Raj* however sub-divided and dismembered, or,

(2) Mahammadan *Nazims*, *Court favourites*, *bankers* and others, who were granted or who acquired by influence in troubled times by sale, mortgage, and by standing security for revenue payments, and after by force or fraud, the overlordship of villages which they got into their power, or

(3) *Military grantees* (of *Jagirs* in fact) who became *Taluqdars*, or

(4) *Special grantees* on whom the title was conferred by the British Government. Such was the great state of the Punjab *Raja of Kapurthala*”.

“All ‘*taluqdars*’ now hold by grants from the British Government that is their only legal title”—*Baden Powell's Land Systems of British India*, Vol. II pp. 214—16.

Tamlik—It “means an assignment of ownership. It is a term of general import applying to the various modes of acquisition of property recognized by Mahammadan Law, but forms no separate and distinct mode of acquiring property”—*per* Stuart C. J. and Oldfield J. in *Said Kusum v. Shaista Bibi*, N. W. P. H. C. R. (1874-75) p. 313.

Tangible immoveable property—A right to fish in a *jalkar* is not a “tangible immoveable property” within the meaning of S. 145 of the *Criminal Procedure Code*; *per* McDonell and Beverley JJ. in *Krishna Dhone Dutt v. Troiloka Nath Biswas*, I. L. R. 2 Cal. 539; *per* O’kinealy and Agnew JJ. in *Anand Moyi Debia v. Surnomoyi*, I. L. R. 13 Cal. 179; but standing

crops are so—*per Aikman J.*, in *Ganga Prasad v. Narain*, *I. L. R.* 15 *All.* 394—See also the cases cited therein.

Tank—Defined, *Regulation* 8, 1887, *S.* (4). An irrigation reservoir a lake, a dammed up ravine, or other suitable place for collecting the water off the highlands; said not to be the English word, but the *Marathi and Guzerati* (tank, taken). A smaller reservoir usually lined with masonry and sometimes underground, is tankhi (*Guzerati*)—*Baden Powell's Land System of British India Index and Glossary*.

Tappa—A small group of villages recognized for administrative purposes—*Baden Powell's Land System of British India*, Vol. 1 p. 179.

Tari—Defined, *Act* 22, 1887, *S.* 3; *Act* 12, 1896, *S.* 3 (1) (g); *Beng. Act* 7, 1878, *S.* 4.

Tarwad—Defined, *Mad. Act* 4, 1896, *S.* 2.

Tea cess—Defined, *Act* 9, 1903, *S.* 2 (b).

Tea cess committee—Defined, *Act* 9, 1903, *S.* 2 (c).

Telegraph—Defined *Act* 13, 1885, *S.* 3; *Beng. Act* 9, 1895, *S.* 2 (9).

Telegraph authority—Defined *Act* 13, 1885, *S.* 3; *Beng. Act* 9, 1895, *S.* 2 (g).

Telegraph line—Defined, *Act* 13, 1885, *S.* 3; *Beng. Act* 9, 1895, *S.* 2 (9).

Telegraph Officer—Defined, *Act* 13, 1885, *S.* 3.

Temperance—"Men differ so much in their capacity for embibing strong drinks that quantity affords no test; what one man might take without exceeding the bonds of moderation another could not take without committing excess. In judging of a

man's sobriety his position in life and the habits of the class to which he belongs, must, in my opinion, always be taken into account, because it is a custom of men engaged in certain lines of business to take what is called refreshment without any imputation of excess at time where a similar indulgence on the part of men not so engaged would be, to say the least, suspicious. But I do not think that the habits of a particular locality ought to be taken into account"—*per* Lord Watson in *Thomson v. Weens*, 9 App. Cas at pp. 695, 696 "*Temperate in habits* is a sentence not to be taken in the Pythagorean sense of total abstinence yet seems to import abstemiousness or at least moderation. 'The rule of not too much by temperance taught'"—*per* Lord Fitz Gerald *Ibi.* p. 697.

Tenancy—Defined, Act 16, 1887, S. 4 (8).

Tenant—Defined, Act 3, 1878, S. 3; Act 18, 1881, S. 4; Act 9, 1883, S. 3; Act 8, 1885, S. 3; Act 22, 1886, S. 3 (10); Act 16, 1887, S. 4 (5) (7); Act 9, 1889, S. 4 (4), S. 9 (11); Act 9, 1898, S. 2 (10); Act 17, 1887, S. 3 (4); Bom. Act 5, S. 3 (15); Mad. Act 5, 1884, S. 3 (XII); Mad. Act 8, 1865, S. 1; Mad. Act 1, 1887, S. 2 (1); Reg. 3, 1879, S. 2 (3); Regn. 1, 1889, S. 3 (3); Regn. 6, 1893, S. 2 (4).

A distinction is often made in the North-Western Provinces between tenants who reside in the village in which they cultivate, and are therefore called *Chapperbund tenants*, and those who do not and are therefore termed *pahi* tenants. But this natural distinction is falling into disuse before the practical distinction which the law and settlement records alone make between the occupancy tenant and the tenant-at-will—See *Baden Powell's Land-System of British India*, Vol. II p. 181. See "*Khudkasht*. As used in S. 12 of the *Rent Recovery Act* (Madras Act 8 of 1865, "is not restricted to agricultural tenants only but includes the permanent lessee of a *mitta*"—*per*

Turner C. J. and Muttusami Ayyar J. in *Subraya v. Srinivasa*, I. L. R. 7 Mad. 580; as used in S. 52 of the *Bengal Tenancy Act* (8 of 1885) "does not include the case of a mere co-sharer tenant who has only a fractional share in the tenure, it means the tenant of the tenure, not one of many tenants"—per Maclean C. J. in *Bhopendra Narain Dutt v. Romon Krishna Dutt*, I. L. R. 27 Cal. at p. 419; as used in the *Punjab Tenancy Act* of 1887 see *Thakur Gir v. Baisakhi*, P. R. 1895, No. 3;

Tenant, Jamai—In the District of Banda (N.-W. P.) we find a class of tenants who are termed *Jamai tenants*, as they only pay the jama or Government assessment. "In the large *bhaiachara* colonies, tenants were freely taken in 'at the founding', and being so, were acknowledged as entitled to equal favour with the co-sharers in everything but the actual proprietary position. Really these tenants paying only at revenue rates, are as much 'fixed rate tenants' as those acknowledged by law in permanently settled districts"—*Baden Powell's Land System of British India Vol. II*, p. 189.

Tenants of the same class—As used in S. 11 of 28 of 1868, see *Mutsaddi v. Bhagat Ram*, P. R. 1885, No. 25.

Tendering—"The production of a written statement at the date of trial is the 'tendering' contemplated by the *Civil Procedure Code*"—per Sargent J. in *Keshavji Naik v. Nasurvanji Ardesir Wadia* in 10 B. H. C. R. at p. 427.

Tenure—Defined, Act 8, 1885, S. 3. As used in S. 105, Act 10 of 1859 "means not the right or interest of any person in the land but the holding of the interest which has been created by the lease"—*Shamchand Kundu v. Rrojonath Pal Choudhary*, 12 B. L. R. 484.

Tenure-holder—Defined, *Act 8, 1885, S. 5; Beng. Act 5, 1876, S. 2.* As used in the *Bengal Tenancy Act*, see *Unrao Bibi v. Mahomad Rajabi*, *I. L. R. 27 Cal.* at p. 208.

Terminal charges—"The expression "terminal charges" means a charge for the use of goods station and for the various duties which a Railway Company as common carriers perform in connection with the goods consigned to them for carriage"—per *Faran C.J.* in *Lalji Bhai Shamji v. The Great Indian Peninsula Railway Co.*, *I. L. R. 15 Bom. 537*; See the same case in a appeal reported in *I. L. R. 16 Bom. 434*.

Terminals—Defined, *Act 9, 1890, S. 3 (14)*.

Terms—Ordinarily speaking the word 'terms' used in connection with a lease does not include a condition relating to interest upon arrears of rent"—per *Amir Ali and Pratt JJ.* in *Basant Kumar Choudhari v. Promotha Nath Bhattacharji*, *I. L. R. 26 Cal.* at p. 132.

Thakur—Defined, *Act 21, 1881, S. 3.*

Thakbust—Means the operation of laying down the boundaries of village mahals or estates—*Baden Powell's Land System of British India Vol. II p. 34.*

Thani ryot—See "Khudkasht".

The Bank—Defined, *Act 11, 1876, S. 3.*

The committee—Defined, *Act 19, 1884, S. 2.*

The canal—Defined, *Act 2, 1881, S. 2.*

The Court—Defined, *Act 8, 1890, S. 4 (5); Act 18, 1891, S. 2 (5) Act 9, 1899, S. 4 (a).* As used in the last para. of S. 93 of the *Transfer of Property Act* "must be construed in the same sense as the words 'the court' in the second, third and fourth paras. of the same section, viz. the Court of first instance and not the

appellate Court"—per Strachey C. J. and Banerji J. in *Sheo-narayan v. Chunni Lal*, I. L. R. 23 All. at p. 89. As used in *Land Acquisition Act* (1 of 1894) does not include a Collector—per Prinsep and Stanley JJ. in *Durga Das Rukhit v. Q. E.*, I. L. R. 27 Cal. 821.

The Court which passed the decree—"A Court does not cease to be 'the Court which passed the decree' within the meaning of S. 649, *Civil Procedure Code* (Act 10, 1877 as amended by Act 12 of 1879) merely by reason that the head quarters of such Court are removed to another place, or merely because the local limits of the jurisdiction of such Court are altered"—per Field J. in *Lachman Pundeh v. Madan Mohan Shye*, I. L. R. 6 Cal. 513.

The date of the sale—As used in the 3rd column of Art II. of the *Limitation Act* of 1877 see 'date'

The day to which the hearing has been adjourned—The expression "the day &c." "is distinguished from 'the day fixed for hearing, and cannot be included in the latter expression"—*Deo Kishen v. Mahesher Sahay*, I. L. R. 4 All. at p. 249 F. B.

The decree—The words "the decree" as used in S. 108 of the *Code of Civil Procedure* "mean the whole decree made in the suit"—per Maclean C. J. and Banerjee J. in *Mahammad Hammedullah v. Tokurenassa Bibi*, I. L. R. 25 Cal. 155.

The decree holder—An attaching creditor is not covered by the term "the decree holder" as used in S. 311 *Civil Procedure Code*—per Rampini and Wilkins JJ. in *Matingini Dasi v. Monmotha Nath Bose*, 4 C. W. N. 542.

The District Magistrate, a Presidency Magistrate..... class—The expression the District Magistrate, a Presidency

Magistrate &c.—as used in S. 488 of the *Criminal Procedure Code* “means the Magistrate of the particular district in which the person resides against whom such a complaint is made”—per West and Nanabhai Haridas JJ. in *In re the petition of Sheikh Fakhr-uddin*, I. L. R. 9 Bom. 40.

The fact of actual possession—As used in S. 145 *Criminal Procedure Code* (Act 10, 1882) “has reference to the date of the institution of the proceedings”—per Collins C. J. and Parker J. in *Agra Bank v. Leishman* I. L. R. 18 Mad. at p. 42.

The fort—Defined, Act 13, 1881, S. 2.

The full amount of the money due—As used in S. 61 of the *Bengal Tenancy Act* (8 of 1885) see *In the matter of Sudhar Roy* I. L. R. 15 Cal. 166.

The institution of criminal proceedings—As used in S. 211 of the *Indian Penal Code*, see “Institution.”

The Magistrate of the District—Defined, Act 3, 1864, S. 1.

The last preceding application—As used in Cl. 3. of S. 230 of Act 10 of 1877, see *Ramkishan v. Sedhu*, I. L. R. 2 All. 275.

The owners—The words “the owners” as used in S. 503 (d) of the *Civil Procedure Code* (Act 14, 1882) mean “the whole body of owners to whom the joint estate belongs”—per Petheram C. J. and Pigot J. in *Poresh Nath Mukerji v. Omerto Noth Mitter* I. L. R. 17 Cal. 614.

The parties concerned in such dispute—The expression “the parties concerned in such dispute” as used in S. 145 of the *Code of Criminal Procedure*, “means that the only parties entitle to notice are those concerned in the dispute likely to cause breach of the peace”—per Glover and Mitter JJ. in *Govind Chander Ghose v. Anando Chander Sircar*, 18 W. R. 54 (Cr.); per

Amshi and Broughton *JJ.* In the matter of *Kumud Narain Bhoop*, *I. L. R.* 4 *Cal.* 650; *per* Mitter and Pigot *JJ.* in *Obhey Chander Mukerji v. Mahammad Sebir*, *I. L. R.* 10 *Cal.* 78;

The Post Office—Defined, *Act* 6, 1898, *S.* 2, (*k*).

The principal Act—Defined, *Act* 2 of 1896, *S.* 3 (1).

The Queen—Defined, *Act* 10, 1897, *S.* 3 (23).

The Railway—Defined, *Act* 10, 1895, *S.* 2 (2).

The time requisite for obtaining copies of the decree appealed against—The expression “the time requisite &c.” as used in *S.* 12 of the *Limitation Act* implies “that the appellant is not to lose his right of appeal by reason of the neglect of the officials who issue copies or who are required to give notice when such copies are ready”—*per* Mahmood *J.* in *Sheogobind v. Ablakhi*, *I. L. R.* 12 *All.* 105.

Thekadar—It is not convertible with *Mouroosi assami* or *Kastkar*—*Baijnath v. Munghi*, 2 *N- W. P. H. C. R.* p. 412 (1870).

Then—The words of reference such as “then” and “said” in an indictment is not to be referred to the last antecedent when the sense requires that they should be referred to some prior antecedent—*Rex v. Wright*, 3 *L. J. Ex.* 370.

There is no evidence—As used in *S.* 289 of the *Criminal Procedure Code*; see *Q E v. Munna Lal*, *I. L. R.* 10 *All.* 414.

Three miles—As used in *Cl.* 2, *S.* 1 of *Act* 3 of 1866 (*Bombay*) must be construed as three miles measured in a straight line along the horizontal plane—*Reg. v. Bhikoba Vinoba*, 4 *B. H. C. R.* p. 9.

Through traffic—Defined, *Act* 9, 1890, *S.* 3 (12).

Ticket—Defined, *Act* 9, 1890, *S.* 3 (16).

Timber—By the term timber is meant properly such trees only as are fit to be used in building and repairing houses—*per* Parsons and Ranade *JJ.* in *Krishnarao v. Babaji*, *I. L. R.* 24 *Bom.* 31. A mango tree which is primarily a fruit tree might not come within the term “standing timber” as used in the definition of moveable property in S. 3 of the *Registration Act* (20 of 1866), but where by the custom of a locality it is used for building purposes, it may—*Ibi.* Defined, *Act* 7, 1878 S. 2; *Act* 19, 1881, S. 3; *Regn.* 6, 1893, S. 2 (10); *Regn.* 1890, S. 2 (6); *Regn.* 7, 1891, S. 3 (3); *Mad. Act* 5, 1882 S. 2.

Time—As used in cl. 9 of S. 1 of *Act* 14 of 1859 is equivalent to “date” or “day of date”—*Tara Chand Ghose v. Munshi Abdul Ali* 16 *W. R.* p. 1; see also *Muhtab v. Ramdayal*, *N-W. P. H. C. R.* p. 319 (1868).

Time of awarding compensation—As used in S. 24 of the *Land Acquisition Act* of 1870 “must be construed as meaning the time of compensation--the time at which the right to compensation attaches”—*per* Lord Hobhouse in *Manmatha Nath Mitter v. Secretary of State for India* *L. R.* 24 *I. A.* at p. 182.

Time of settlement—The words “time of settlement” as used in S. 37 of *Act* 11 of 1859 mean the time when the contract was made with Government, and in the case of a permanently settled estate the time of Permanent settlement—*per* Trevelyan and Wilkins *JJ.* in *Koowar Singh v. Gour Sunder Prasad Singh* *I. L. R.* 24 *Cal.* 887.

Title—As used in S. 2 of *Act* 15 of 1877 (*Limitation*) see *Thakurya v. Sheo Singh Rai* *I. L. R.* 2, *All.* 872; *Zulfiqar Husain v. Munna Lal*, *I. L. R.* 3, *All.* 148.

To be executed—As used in S. 251 *Civil Procedure Code* (*Act* 14, 1882) “seem to imply that it was not intended that the

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proper officer should himself execute all warrants sent to him"—*per* Norris and Beverley *J.J.* in *Dharam Chand Lal v. Q. E. I. L. R. 22, Cal. 597.*

To be mentioned hereafter—The expression "to be mentioned hereafter" used in a contract for selling goods with reference to the place of delivery "has not the effect of reserving any part for subsequent agreement. The plain and obvious meaning of the term is that the place is to be mentioned by the party who according to the former part of the agreement had the right of mentioning"—*Grenon v. Lachmi Narain Agarwala I. L. R. 24 Cal. at pp. 17 and 18 P. C.*

To hear—The power "to hear" an appeal conferred by *S. 27* of the *Bombay Civil Courts Act* (14 of 1869) includes also the power to hear any question as to limitation relating thereto—*per* Birdwood and Jardine *J.J.* in *Mulna Amad v. Krishnaji Ganesh Godbole; I. L. R. 14 Bom. 594.*

To sell, endorse and assign—See *The Bank of Bengal v. Fagun 5, M. I. A. p. 40; Jumna Das v. Eckford I. L. R. 9 Cal. at p. 3.*

To set aside an adoption—As used in *Art. 129, Sch. ii of Act 9 of 1871 (Limitation)* see *Mahesh Narain Munshi v. Tarak Nath Moitra I. L. R. 20 Cal. 487.*

To show cause—The expression "to show cause" as used in *ss 258 and 525 of the Code of Civil Procedure (Act 14, 1882)* does not mean merely to allege causes, nor even to make out that there is room for argument but both to allege cause and to prove it to the satisfaction of the Court"—*per* Mitter and Norris *J.J.* in *Ranglal v. Hem Narain Gir I. L. R. 11 Cal. 166; Amrit Ram v. Dasrat Ram I. L. R. 17 All. at p. 26 F. B. (Edge C. J., Knox, Blair, Banerji and Burkitt J.J.) Dandekar v. Dandekars I. L. R. 6, Bom. 663, (Melvill and Pinheg J.J.); In the matter of the petition of Dutto Singh, I. L. R. 9, Cal. 575 (Mitter and O'Kin-*

eally JJ.); *Jones v. Ledgard*, I. L. R. 8 All. 340; *Surgan Raot v. Bhikkari Raot*, I. L. R. 21 Cal. 213; *Jagan Nath v. Mannu Lal* I. L. R. 16 All. 231 (Edge C. J. and Banerji J.).

To what extent—As used in S. 4 of the *Ganjam and Vizagapatam Agency Courts Act* (24 of 1839) “seem to refer in their grammatical sense to cases where, though no appeal lies, the finality of the decision is not intended to be absolute, but is subject to qualifications or conditions”—*per* Subramania Ayyar and Benson JJ. in *Maharaja of Jeypur v. Jammanadhora* I. L. R. 24 Mad. at p. 350.

Tola—Defined, *Act* 22, 1881, S. 3; *Act* 12, 1896, S. 3 (l).

Toll—Defined, *Act* 11, 1886, S. 3 (10); *Act* 2, 1901, S. 2 (h). As used in S. 269 of *Act* 4 of 1884 (*Madras District Municipality*) see *Abdul Aziz Sahib v. Cudduppa Municipality* I. L. R. 26 Mad. 475.

Tout—Defined, *Act* 18, 1879; *Act* 11, 1896.

Town—Defined, *Act* 13, 1856, S. 7; *Act* 19, 1884, S. 2; *Act* 13, 1889, S. 12 (2); *Act* 9, 1892, S. 2.

Town of Bombay—Defined, *Act* 5, 1857, S. 21; “includes all places within the islands of Bombay and Colaba”—*per* Farran C. J. and Strachey J. in *Trumbuck Gangadhar Ranade v. Bha-w in Dis Mu'chanl*, I. L. R. 23 Bom. at p. 353.

Trade—The term “trade” “includes the exchange of goods for other goods or for money”—*per* Parker J. in *Venkata Reddi v. W. Taylor* I. L. R. 17, Mad. at p. 101; as used in S. 168 *Indian Penal Code* does not include money lending—*per* Anderson J. in *Crown v. Nek Muhammad* P. R. 1903, No. 22 (Cr.).

Trade description—Defined, *Act* 4, 1889, S. 2. (2).

Trade mark—*Act* 45, 1860, S. 478; *Act* 4, 1889, S. 2 (1).

Trade or occupation—As used in CL 3, S. 123, *Criminal Procedure Code* (Act 10, 1882), see *Indra Nath Banerji v. Q. E.*, *I. L. R.* 25 Cal. 425.

Trader—"An indigo planter is a 'trader' within the meaning of S. 60 of the *Insolvent Act* (11 and 12 V. C. 21).

Traffic—Defined, *Act* 9, 1890, S. 3 (11).

Tramway—Defined, *Act* 1, 1886, S. 2; *Act* 11, 1886, S. 3 (5); *Act* 9 1890, S. 3 (1); *Bom. Act* 1, 1874, S. 2; *Bom. Act* 2, 1883, S. 2; *Beng. Act* 3, S. 1883, S. 2; *Beng. Act* 1, 1880, S. 2.

Transaction—The word "transaction" "in its largest sense means 'that which is done'"—*per Mitter J.* in *Gujju Lal v. Fateh Lal*, 6 C. L. R. at p. 444; *S. C. I. L. R.* 6 Cal. at p. 175. A fight between two parties cannot be treated as "transaction" within the meaning of S. 239 of *Criminal Procedure Code*—*per Prinsep, Pigot and Hill JJ.* in *Q. E. v. Chandra Bhuiya*, *I. L. R.* 20 Cal. at p. 550; *per Birdwood and Jardine JJ.* in *Q. E. v. Fakirappa*, *I. L. R.* 15 Bom. 496; as used in S. 13 of the *Evidence Act* see *The Collector of Gorakhpur v. Palakdhari Singh*, *I. L. R.* 12 All. p. 1.

Transfer—Defined, *Act* 27, 1866, S. 2; *Act* 1, 1869, S. 2; *Bom. Act* 2, 1863, S. 16 (g); *Bom. Act* 7, 1863, S. 32 (g). The word "transfer" "has long been recognized to be a technical term of law in all countries where English is the language of the Legislature and of the Courts of Justice. It is often used as a convertible term with 'alienation', 'conveyance' and 'assignment'. Whether any distinction exists between the technical meanings of these expressions, and, if so, what that distinction is, it is not necessary exactly to determine. But it may be safely taken that the word 'transfer' is used in law in the most generic signification, comprehending all the species of contract which pass

real rights in property from one person to another—*per* Mahmood J. in *Mata Din Kasaundhan v. Kazim Husain*, 1. L. R. 13 All. at p. 476; *Gopal Panley v. Parsotam Dass*, 1. L. R. 5 All. at p. 137; *per* Young J., *Kishen Lal v. Gunga Ram*, 1. L. R. 13 All. at p. 38 “is one of the widest terms that can be used”—*per* James L. J. in *Gathercole v. Smith*, 50 L. J. Ch. 672.

Transfer of property—Defined Act 4, 1882, S. 3.

Transport—Defined Act 1, 1887, S. 3; Act 12, 1886, S. 3 (4); *Bang. Act* 8, 1899 S. 2 (d); Act 11, 1878, S. 10, explanation. Act 5, 1886, S. 3 (6); *Mud. Act* 1, 1888, S. 3 (17), *Regn.* 12, 1867, S. 2 (4).

Treasure—Defined, Act 6, 1878 S. 3.

Tree—Defined, Act 7, 1878 S. 2; Act 19, 1881, S. 3; *Mud. Act* 5, 1881 S. 2; *Regulation* 7, 1891, S. 3 (2); *Regulation* 5, 1890, S. 2 (5); *Regulation* 6, 1887, S. 2 (2). The word “trees” “generally speaking means wood applicable to buildings and does not include orchard trees”—*per* Littledate J. in *Bullen v. Denning*, 4 B. and C. 851.

Trial—Defined, Act 18, 1891, S. 2 (7); “means the proceeding which commences when the case is called on, with the Magistrate on the Bench, the accused in the dock, and the representatives of the prosecution and for the defence, if the accused be defended, present in court, for the hearing of the case”—*per* Maclean C. J. in *Gomer Sirdar v. Q. E.*, 1. L. R. 25 Cal. at p. 865.

Trial by Jury—The expression “trial by jury” as used in Cl. 6 of S. 8 of the *Criminal Procedure Code* does not only refer to proceedings up to the time when the jury pronounce their verdict, but refers, generally to cases triable with jury as contrasted from cases tried with the help of the assessors or in any other manner mentioned in the *Criminal Procedure Code*—*per* Q. E., v. *Macarthy*.

Tribe—Defined, *Act 2, 1897, S. 3, 1 A.*

True copy—"As true copy does not absolutely mean an exact copy,'
"but so true that no body can by any possibility misunderstand
it"—*per* Bacon C. J. *In re Hewer; Ex parte Kahen* 51 L. J.
Ch. at p. 905.

Trust—Defined *Act 2, 1882, S. 3; Act 27, 1866, S. 2; Act 1, 1877, S. 3; Act 3, 1874, S. 6.*

Trust money—Defined *Act 2, 1882, S. 3.*

Trust property—Defined *Act 2, 1882, S. 3.*

Trust for a specific purpose—As used in S. 10 of the *Limitation Act* (9 of 1871), see *Greender Chander Ghose v. Mackintosh* I. L. R. 4 Cal. 897.

Trust for public charitable purposes—With reference to the expression "trust for public charitable purposes" Plowden J. remarks: Looking to other instances of the use of the word 'charitable' by the Legislature, it seems impossible to affirm that 'charitable purposes' usually include 'religious purposes.' Looking however at the decision of the High Courts, it would seem that as 'charitable purposes' in connection with trusts receive the same construction as in the English Court of Chancery, the expression 'charitable' might be held to include religious."

"Assuming, in view of this apparent conflict, that the inference from the use of the word 'charitable' by the Indian Legislature is not conclusive as to its scope, it is still I think far from clear that in the Mufussil Courts, which are not courts established by an English charter, and do not administer English law, the word 'charitable' should be restricted to the meaning which it will bear upon an equitable construction of the expression derived from the statute of Elizabeth"—The *Deputy Com-*

missioner of Delhi v. Mussammat Muhamdi Jan and others
P. R. 1882, No. 50 at p. 148.

Trustee—"Every officer appointed by law to keep records ought to deem himself for that purpose a trustee"—per Lord Denman C. J. in *Rea v. Justices Staffordshire* 6 A. and E. 84, 100, followed in *Q. E. v. Arumugan*, 1 L. R. 20 Mad. at p. 192; as used in Act 20 of 1863 see *Jun Ali v. Ram Nath Mundal* 1, L. R. 8, Cal. 32. Defined, Act 1, 1877, S. 3; Act 2, 1882, S. 3; Act 15, 1887, S. 3; Act 27, 1866, S. 2; Mad. Act 2, 1886, S. 6.

Try any case—The words "try any case" in S. 555 of the *Criminal Procedure Code* "are comprehensive enough to include the hearing of an appeal"—per Strachey C. J. in *In the matter of the petition of Inayat Husain*, All. W. N. 1899 at p. 75; per Banerjee J. in *Nistarin Bibi v. Ghose* 1, L. R. 23 Cal. at p. 47. See *In the matter of Mahesh Chander Mazoomdar Novodeep Chandar*, 1, L. R. 16 Cal. at p. 125.

Unavoidable accident—The illness of the mukhtar of a party to the suit occasioning a default is an "unavoidable accident" within the meaning of Act 16 of 1845, *Anundomoyee Debee v. Poorno Chander Roy*, 9, M. I. A. 26.

Unclassed suit—Defined, Act 18, 1884, S. 3 (3); Act 6, 1900, S. 2 (g).

Unconscionable bargain—The specific English law of maintenance and champerty has not been introduced into India. "A fair agreement to supply funds to carry on a suit in consideration of having a share of the property, if recovered, ought not to be regarded as being, *per se*, opposed to public policy". But agreement of this kind ought to be carefully watched, and when found to be extortionate and unconscionable, so as to be inequitable against the party are to be made not with the *bona fide* object of assist-

ing a claim believed to be just, and of obtaining a reasonable recompense therefor, but for the purpose of gambling in litigation, or of injuring or oppressing others by abetting or encouraging unrighteous suits, so as to be contrary to public policy, effect ought not to be given to them"—*Ram Coomar Coondoo v. Chunder Canto Mukerji* L. R. 4 I. A. pp. 46 and 47. See *Banka Behari and others v. Sunder Lal and others*, All. W. N. 1893 p. 130 F. B.

Uncultivated land—Defined, *Bom. Act 1, 1880, S. 41, explanation.*

Undertakers—Defined, *Bengal Act 9, 1895, S. 2 (b).*

Undertaking—*Act 11, 1886, S. 3 (8); Bom. Act 1, 1874, S. 2.* As used in *S. 3 of Act 8 of 1871 (Registration Act)* means an accepted undertaking"—*Apu Budgavda v. Narhari Annajee*, I. L. R. 3, Bom. 21.

Under-proprietary Right—Defined, *Act 22, 1886, S. 3.*

Under-propriator—Defined, *Act 22, 1886, S. 3 (8).*

Under-Raiyat—Defined, *Act 8, 1885, S. 4 (3).*

Under-tenant—Defined, *Beng. Act 8, 1879, S. 3.*

Under-tenure—Defined, *Beng. Act 6, 1880 S. 3; Beng. Act 5, 1887, S. 2.* As used in *S. 59 of Beng. Act 8 of 1869* see *Kristendra Roy Choudhari v. Aena Bewa*, 10 C. L. R. 399; *S. C. I. L. R. 8, Cal. 675.*

Undue influence—Defined, *Act 9, 1872, S. 16 (1)* as amended by *Act 6 of 1899.*

Unfair preference—The term 'unfair preference,' " may be fairly taken to refer to what in the English Bankruptcy Law is called a 'fraudulent preference' and to aim at suppressing voluntary conveyances or dispositions of property"—*per Rattigan J. in Sheikh*

Allahdin v. Faiz ul-la P. R. 1883 No. 142; "in order to constitute a 'fraudulent preference' the act must be the spontaneous act of the debtor not *bonafide* originating in a demand or some other step of a creditor"—*per James L. J.* in *Ex parte Tempest L. R.* 6 Ch. 74 quoted *Ibi* "From the mere fact that the judgment-debtor had paid a creditor, it cannot be inferred that he had given him an 'unfair preference' within the meaning of S. 35¹ (c) of Act 10 of 1877. Payment in consequence of some pressure or *bona fide* application by a person having right to make it cannot be regarded as 'unfair preference'"—*per Straight and Oldfield JJ.* in *Nathmal Das v. Hira Lal, All. W. N.* 1882 p. 18.

Union—Defined, *Beng. Act* 5, 1876, S. 6 (21); *Mad. Act* 5, 1884 S. 3 (iii).

United Provinces—Defined, *N.-W. P. Act* 1 of 1900 S. 4 (45).

United Provinces Act—Defined, *N.-W. P. Act* 1, 1900, S. 4 (46).

Unlawful—"The word 'unlawful' is not defined in the *Indian Penal Code* and there are various sections in the Code where the words 'illegal' and 'unlawful' are indiscriminately used. An act, however, may be lawful though it may be illegal; and an act may be unlawful, though not illegal"—*per Ghose and Gordon JJ.* in *Catroon v. Mathews I. L. R.* 24 Cal. at p. 496. "It is only when some express provision of law is intrenched upon that the term 'unlawful' can accurately be applied. The accurate signification of the word is 'contrary to law'"—See the observations of Lord Halsbury *L. C.* in *Mogal Steamship Co. v. McGregor Gow & Co.*, [1892] *App. Cas.* at p. 39.

Unlawful assembly—Defined, *Act* 45, 1860, S. 141.

Unlawfully—The word 'unlawfully' "is used exceptionally in a wide and general sense as regards conspiracy but its ordinary import is an act which is "forbidden by some definite law and

does not embrace that which is merely immoral"—*per* Stephen J. in *R. v. Clarence* 22 Q. B. D. 23.

Unlimited Civil Jurisdiction—Defined, 53-4, V. C. 27 S. 15.

Unmarried—The primary meaning is "Without ever having been married"—*per* Hall, V. C. in *Dalrymple v. Hull* 16 Ch. D. at p. 716—is capable of two meanings, according to the context in which it is used. "It may mean either 'never having been married,' or not having a husband at the time in question"—*per* Pearson J. in *In re-Sergeant Mertens v. Walley*, 26 Ch. D. at p. 576.

Unprotected child—Defined, Act 13, 1880, S. 2 (4); *Beng. Act* 5, 1880, S. 2; *Bom. Act* 1, 1877, S. 2 (5); *Bom. Act* 4, 1879, S. 2 (5); *Bom. Act* 1, 1892, S. 4 (e); *Mad. Act* 4, 1884 S. 3 (XX); *Mad. Act* 5, 1884, S. 3 (XVI).

Unprotected person—Defined, *Beng. Act* 5, 1880, S. 2.

Unprovided for—The expression "unprovided for" in contradistinction to the term "enriched" must be construed in the sense of "indigent" as opposed to "possessed of means," irrespective of the sources of provision or non-provision"—*per* Straight J. in *Danno v. Darbo* I L. R. 4 All. at p. 245.

Unregistered—Defined, Act 3, 1877, S. 50 *Explanation*, see *Janki Prasad v. Sri Matia Mantangani Debia* All. W. N. 1885, p. 115.

Unregistered Company—Defined, Act 6, 1882, S. 243. As used in S. 50 of the *Registration Act* (3 of 1877) see *Janki Prasad v. Sri Matia Mantangani Debia* I. L. R. 7 All. 578.

Unsafe—Defined, Act 7, 1880, S. 4.

Unseaworthiness—The word 'unseaworthiness' admits of two meanings—the one relating to the fitness of the ship to encounter

the perils of the sea ; the other in relation not only to that fitness but also to the fitness of the ship and her equipment to carry the particular goods with which she is loaded"—*per* Sterling L. J. in *Rathbone Brothers and Co., v. D. MacIversons and Co. L. R.* [1903] 2 K. B. at p. 393.

Unseaworthy—Defined, *Act 7, 1880, S. 4.*

Unsound mind—The term "unsound mind," as used in S. 1, *Act 34 of 1858* comprehends imbecility whether congenital or arising from old age or mental alienation resulting from disease"—*per* Latham J. in the matter of *Cowasji Baramji Lilaro Vata*, an alleged lunatic, *I. L. R. 7 Bom.* at p. 18. Mere eccentricity does not make a man of unsound mind—*per* Sir Richard Couch in *Pilkington v. Gray*, [1899] *A. C.* at p. 403.

Until—The word "until" may be construed either exclusive or inclusive of the day to which it is applied, according to the context and subject-matter—*The King v. Stevens and Agnew, 5 East 244.*

Until further order—When an interim order is made to extend over a certain day or until further order, it does not mean that it is to go on after that day or until further order, but that it is to stop earlier if the court shall so order—until that day or further order, meaning at an earlier date"—*per* Malins V. C. in *Bolton v. London School Board, 7 Ch. D.* at p. 771.

Upon—The word "on" or "upon" may either mean before the act done to which it relates, or *simultaneously with* the act done or *after* the act done, according as reason and good sense require with reference to the contest and the subject-matter of the enactment"—*Razina v. Humphery, 10 A. & E. 335, 370.*

Upper Burma—Defined, *Act 20, 1886, S. 2 (1) (a); Act 11, 1889, S. 3 (3); Act 13, 1898, S. 3 (f).*

Upper Passenger Deck—Defined, S. 57—8. V. C. 60 S. 268 (5).

Usage—"The word "usage" at any rate would include what the people are now or recently in the habit of doing in a particular place. It may be that this particular habit is only of a recent origin or it may be one which has existed for a long time." "Regular and ordinary practice" essential—*per* Trevelyan and Beverley JJ. in *Dalglish v. Gazaffer Husain*, I. L. R. 23 Cal. at p. 429.

Usage having the force of law—The expression "usage having the force of law" as used in cl. (a) of S. 584, *Civil Procedure Code* means the *Common or Customary law of the country or community*—*per* Petheram C. J. in *Niwath Singh v. Bhicki Singh* I. L. R. 7 All. at p. 653. See 19, I. A. at p. 233.

Use—The "use" of water contemplated by *Madras Act 7 of 1865 (Irrigation Cess Act)* is a "voluntary use"—*Krishnayya v. Secretary of State for India*, I. L. R. 19 Mad. at p. 27.

Used—As used in S. 3 of the *Bombay Gambling Acts* (4 of 1887 and 1 of 1890) "must be taken in its ordinary sense as meaning *actually used*"—*per* Parsons and Talang JJ. in *Q. E. v. Kanji Bhimji*, I. L. R. 17, Bom. 184.

User as trade mark—Now what constitutes the use of anything as 'a trade mark'? Not the mere use of it, but the use of it in a particular way, and with a particular result, you use the thing as a 'trade mark' if you use it in business, or as is often said, in the market as a mark to denote your goods and to distinguish them from the goods of any one else. You use it not merely as a writing, but as a mark in the market and you must show that you used it in the market for the purpose of distinguishing your goods, and I think you must also show that the market accepted it as a distinguishing mark of your goods—then you use it as

your 'trade mark'—*per* Lord Esher *M. R.*] in *Richards v. Bu tober*: *L. R.* (1891) 2 *Ch.* at p. 548.

Uses—The words "uses any premises" in *S.* 77 of *Act 3* of 1864 mean "using and employing the premises as a place for the carrying on of the offensive trades mentioned in the section"—*The Municipal Commissioners for the Suburbs of Calcutta v. Zamir Sheikh*, 16, *W. R.* p. 4 (*Crl.*).

Using—As used in ss. 467 and 471 *Indian Penal Code* see *Q. E. v. Razghunath Das* *I. L. R.* 20 *Cal.* 413.

Using a false property-mark—Defined, *Act 45*, 1860, *S.* 481.

Using a false trade-mark—Defined *Act 45*, 1860; *S.* 480.

Usufructuary mortgage—Defined *Act 4*, 1882, *S.* 58 (*d*).

Usufructuary mortgagee—Defined *Act 4*, 1882, *S.* 58 (*d*).

Utbandi tenure—See *Beni Madhab Chackerbutty v. Bhuban Mohan Biswas*, *I. L. R.* 17, *Cal.* 393.

Vaccination area—Defined, *Bom. Act 1*, 1892, *S.* 4 (*g*).

Vaccination Circle—Defined, *Act 13*, 1880, *S.* 2 (6); *Bom. Act 1*, 1892, *S.* 4 (4).

Vaccination District—Defined; *Bom. Act 1*, 1877, *S.* 3; *Bom. Act 4*, 1879, *S.* 3.

Vaccination season—Defined *Act 13*, 1880, *S.* 2.

Vaccinator—Defined, *Act 13*, 1880, *S.* 2; *Mad. Act. 4*, 1884, *S.* 3; *Mad. Act 5*, 1884, *S.* 3.

Vagrant—Defined, *Act 9*, 1874, *S.* 3.

Vague—"Vagueness is a misleading term. A contract may be so vague in its terms that it cannot be understood, and in that case it is of no effect at law or equity. There is another kind of vagueness which arises from the property not being ascertained at the date of the contract but if at the time when the contract is sought to be enforced the property has come *in esse* and is capable of being identified as that to which the contract refers, I cannot see why there is in it such vagueness as to prevent a court of equity from enforcing the contract"—*per Bowen L. J. In re Clarke Coombe v. Carter* 36 ch. D 848.

Valuable security—Defined, *Act* 45, 1860, *S.* 30. A deed of divorce is a valuable security within the meaning of *S.* 30, *Indian Penal Code*—*per Q. E. v. Azim-ud-din*, 11, *W. R.* at p. 16.

Valuation—As used in *S.* 135 of the *Calcutta Municipal Consolidation Act* (*Beng. Act* 2 of 1888) means not "the amount of the valuation," only but also the process or act of valuation—*Corporation of Calcutta v. Bhupati Roy Chaudhari*, *I. L. R.* 26 *Cal.* 74.

Value—Defined, *Act* 18, 1884, *S.* 3 (4); *Act* 16, 1885, *S.* 3; *Act* 22, 1886, *S.* 3 (16); *Regulation* 1, 1896, *S.* 3; *Act* 6, 1900, *S.* 2 (h); *Mad. Act* 1, 1891, *S.* 3 (32). As used in the *Court Fees Act* (7 of 1870) *Sch. I, Cl. II* see *In the matter of the last Will and Testament of Ramchandra Lakshmanji*, *I. L. R.* 1, *Bom.* 118—See *Harnam Singh v. Kirpa Ram* *P. R.* 1887, *No.* 1.

Value of the original suit—The expression "value of the original suit" as used in *S.* 21, *cl. (a)* of *Act* 12 of 1887 (*Beng. N. W. P. and Assam Civil Courts*) does not mean the value which is found upon investigation by the Court below to be the value of the suit—*per Banerji and Gordon J. J. in Nilmoney Singh v. Jagbandhu Roy* *I. L. R.* 23, *Cal.* at p. 542; it means "the value as

stated by the plaintiff in his plaint"—per Edge C. J. and Knox J. in *Mahabir Singh and another v. Behari Lal and others*, All. W. N. 1891 p. 107; not an arbitrary value assigned by the plaintiff—per Petheram C. J. and Banerjee J. in *Boyidya Nath Adya v. Makhan Lal Adya*, I. L. R. 17 Cal. at p. 688; for purposes of jurisdiction in partition suits it means the value of the property in suit. *Ibi*.

Varying—The word "varying" is used in its wide or general meaning in S. 99 and in a special or restricted sense in S. 92 of the *Evidence Act*—*Tara Chand v. Baldeo and others* P. R. 1890, No 117 at p. 375 F. B.

Vehicle—Defined, *Bom. Act* 3, 1888, S. 3 (g). The term "vehicle" "is not confined to carriages drawn by horses or other beasts of burden." "A bicycle is a *vehicle* with springs within the meaning of the *Madras Act* 1 of 1884" So is a perambulator used for children—per Shephard and Best J. J. in *Wilson v. The Madras Municipality* I. L. R. 19, Mad. at p. 84.

Verbal Statements—The questions and signs taken together may properly be regarded as "verbal statements" made by a person as to the cause of his death within the meaning of S. 32 of the *Evidence Act*—*Q. E. v. Abdullah* I. L. R. 7, All. 385 F. B.

Verdict—As used in Cl. (d), S. 423, *Criminal Procedure Code* (*Act* 10, 1882) means in cases when an accused person is tried for various offences arising out of a single act or series of acts as contemplated by S. 236 the entire verdict on all the charges and is not limited to the verdict on a particular charge upon which an accused may have been convicted and appealed against—per Banerjee and Sale J. J. in *Krishna Dhan Mandal v. Q. E.* I. L. R. 22 Cal. 377; as used in S. 227 means the final verdict which the judge is bound to record *Q. E. v. Appa Subhana Mendre* I. L. R. 8, Bom. 201.

Vessel—Defined, *Act 10, 1897, S. 3 (56); Act 2, 1896, S. 3 (8); Act 5, 1891, S. 3; Act 10, 1889, S. 3 (3); Act 13, 1887, S. 2 (4); Act 6, 1884, S. 5 (1); Act 4, 1884, S. 4 (3); Act 21, 1883, S. 6 (7); Act 1, 1882 S. 3; Act 6, 1881, S. 7; Act 2, 1881, S. 2 (2); Act 15, 1879, S. 2; Act 9, 1879, S. 3; Act 1, 1879, S. 3 (20); Act 8, 1878, S. 3 (f); Act 8, 1873, S. 3 (4); Act 3, 1864, S. 1; Act 45, 1860, S. 48, N.-W. P. Act 1, 1900, S. 4 (47); Mad. Act 2, 1890, S. 3; Regulation 12, 1887, S. 2 (5); 57-8 V. C. 60, S. 742; 48 9, V. C. 49, S. 12; 36 V. C. 88, S. 2.—“Anything beyond a mere boat is ordinarily called a vessel”—*per Lord Esher M. R. in Gapp v. Bond, 19 Q. B. D. at p. 202.**

Vest—“To Vest generally means to give the property in”—*per Brett L. J. in Coverdale v. Charlton 48 L. J. Q. B. 132; S. C. 42 Q. B. D. 120.*

Vested—As used in *S. 10, Limitation Act (9 of 1871)* is not used “in the sense of ‘owned’, but in the sense of ‘held possession’”—*per Markby J. in Kherodemoney Dossee v. Doorgamoney Dossee 3, C. L. R. at p. 327.*

Vested interest—Defined, *Act 4, 1882, ss. 19 and 21.*

Vesting—“When applied to the subject matter of property according to its legal acceptation gives the property in it and not merely the control over it”—*per Sargents C. J. in Kathiawar Trading Co. v. Virchand Dipchand I. L. R. 18, Bom. at pp. 130, 131.*

Veterinary Surgeon—Defined, *Beng. Act 8, 1880, S. 2.*

Vexatiously withheld—A debt cannot be said to be “vexatiously withheld” within the meaning of *S. 2, Act 27 of 1860* simply because the debtor omits to pay it—*per Garth C. J. in Chander Coommar Roy v. Gokul Chander Bhattacharji, I. L. R. 6, Cal. 370.*

Vice-admiralty cause—Defined, *Act 16, 1891, S. 3.*

Vice-admiralty court—Defined, 36-7 V. C. 88, S. 2.

Village—Defined, *Act 3, 1889, S. 2 (1)*; *Act 8, 1885, S. 3 (11)*; *Act 1, 1883, S. 3 (12)*; *Act 10, 1882, S. 45 Explanation*; *Act 18, 1881, S. 4 (8)*; *N and O. Act 3, 1892, S. 2 (1)*; *N and O. Act 2, 1892, S. 2*; *Beng. Act 6, 1870, S. 4*; *Beng. Act 5, 1887, S. 2*; *Bom. Act 1, 1889, S. 4*; *Bom. Act 1, 1880, S. 3 (1)*; *Mad. Act 3, 1895, S. 4*; *Mad. Act 2, 1894, S. 4*; *Mad. Act 1, 1889, S. 5*; *Regulation 5, 1896, S. 2 (5)*; *Regulation 2, 1886, S. 2 (2)*; *Regulation 1895, S. 2 (1)*; *Regulation 14, 1887, S. 2*; *Regulation 3, 1889, S. 3* It means “a definite area of land with houses upon it”—*per Petheram C. J. and Mahmood J. in Gokul Singh v. Mannu Lal, 1. L. R. 7 All. at p. 774*; used as an equivalent of the word *mauza* or *deh* does not mean a small collection of houses with a green, a few shops, and a church spire rising above the ‘immemorial elms’; it means always “a group of landholdings aggregated in one place with (usually) a central aggregate of residences, the inhabitants of which have certain relations and some kind of union or bond of common government”—*Baden-Powell's Land-systems of British India Vol. I, p. 97*. “There can hardly be any doubt that the formation of village groups—that is the aggregation of landholdings in one place, and with a certain degree of union among the cultivators—is not peculiar to Hindu races, either original or converted. It is found in India among the great races which were certainly antecedent to the Hindus, and which still survive in widely distant parts of the the country. The village apart from questions of particular forms—is not so much the result of any system as it is of a natural instinct. We find it everywhere, especially in the plain country, where circumstances invited it; at the same time we do not find it in other places—on the Himalayan hill sides, on the west coast (Kanara and Malabar) and in the dry regions of the Southern Punjab. In these latter situations we find individuals

VI

or a few connected families with individual holdings; the residences are separately located in the holdings, or perhaps a few family houses are arranged in a group; and we find that on the west coast there is no word for 'village' but the term for a family group of houses with its dependencies is some word such as *tara* meaning a 'street'—*Ibi* at p. 106.

Village cattle—The term "village cattle" as used in *S. 23 of Bom. Act 1, of 1865* "does not include the cattle of any roving grazier who may choose to squat for a few months on the public ground of a village"—*per. Westropp C. J. in The Collector of Thana v. Bal Patel, I. L. R. 2, Bom. at p. 112.*

Village cess—Defined, *Act 17, 1887, S. 3 (10); Act 16, 1887 S. 4 (12); Act 18, 1881 S. 4 (3).*

Village channel—Defined, *Beng. Act 3, 1876, S. 3 (2).*

Village community—"The term 'village community' does not indicate anything like a communistic or socialistic right or interest. It can be correctly used only with reference to the fact that in many villages families live together under a system which makes them joint owners; while in others the people merely live under similar conditions and under a sense of tribal or caste connection and with a common system of local government. It cannot be used as suggesting any idea of having the land or anything else in common"—*Badden Powell's Land systems of British India Vol. I p 113.* As used in *S. 10 of the Punjab Laws Act, 1872* "should be construed as including not only the members of the proprietary body, but also all those individuals who dwell within the village boundaries, and whose rights and duties are as clearly defined as those of the proprietors themselves. Whether as proprietors or tenants, or menials or shopkeepers or village officers, they are all members of a community or body associated together for the purpose of maintain-

ing themselves and others and none of them can be said to be wholly independent of the others"—*Hira Lal and others v. Kuda Bux and others*, P. R. 1897, No. 27—See also No. 74. *Ibi*, "is not used to denote a village community of the typical sort consisting of members of one family or one clan holding the village lands in common, and dividing between them the agricultural lands according to the custom of the village. It seems rather used in a popular sense to denote a body of persons bound together by the title of residence in one and the same village, amenable to the village customs and subject to the administrative control of the village officer." It is not confined to the landowners of the village. Occupancy-tenants are members within the meaning of the *Punjab Lands Act* and so are all persons in an inferior position who belong to the village though they may be unconnected with the land and not entitled to any right of pre-emption under the *Act*—*Rahim-ud-din v. Rewal*, I. L. R. 30, Cal. 635 P. C.

Village Court—Defined *Mad. Act* 1, 1889, S. 5.

Village Forest—Defined, *Act* 7, 1878, S. 27.

Village Forest Officer—Defined, *Regulation* 6, 1893, S. 2 (3).

Village Land—Defined, *N. and O. Act* 2, 1894, S. 2 (2).

Village Munsif—Defined, *Mad. Act* 1, 1889, S. 5; *N. and O. Act* 3, 1892 S. 2 (3).

Village Office—Defined, *Mad. Act* 2, 1894, S. 4.

Village Policeman—Defined, *Beng. Act* 5, 1887, S. 2.

Village Service Tenant—Defined, *Act* 9, 1883, S. 50A, (*Inserted Act* 17, 1889, S. 11).

Villager—Defined *Regulation* 6, 1874, S. 2.

Void agreement—Defined, *Act* 9, 1872, S. 2 (g).

Void contract—Defined *Act 9, 1872 S. 2 (j)*.

Voidable contract—Defined *Act 9, 1872, S. 2 (i)*.

Void—As used in *S. 257A, Civil Procedure Code* must only be taken to mean “void for the purposes of execution”—*Hukumchand Oswal v. Zahurunnisa Bibi and others*, *I. L. R. 16 Cal. 504*; void for all purposes—*Vishnu Viswanath v. Har Patel* *I. L. R. 12 Bom. 499* [*Nanabhai Hari Das and Jardine J.J.*] *Heera Nema and others v. Pestonji Dossabhoy* *I. L. R. 22, Bom. 693 F. B.* [*Farran C. J. Candy and Tyabji J. J.*]. In a later case, however, the Bombay High Court has held that the agreement to which the 1st para. of *S. 257A* relates, is one which suspends and does not destroy the right of execution. And where an agreement puts an end to the decree and does not merely suspend the execution, it is not void—*Tikaram and others v. Anant bhat* *I. L. R. 25 Bom. 252* [*Jenkins C. J. and Betty J.*]. The Allahabad High Court also has recently taken a similar view—*Lalji Singh v. Gaya Singh and others*, *I. L. R. 25 All. 317 F. B.* see also *Dan Bahadur v. Ananda Prasad* *I. L. R. 18, All. 435* and *Dalu Malwahi v. Palakdhari Singh*, *I. L. R. 18 All. 479*, and *Pala Mal v. Hari Ram and others*, *P. R. 1904, No. 88*.

Voluntarily—Defined *Act 45, 1860, S. 39*.

The ordinary sense of the word is “freely, without compulsion,” and “not under any obligation”—*per Lord Russel C. J.* in *Attorney General v. Ellis* [1895] *2 Q. B. at p. 470*; involves a particular intention—*per West J.* in *Reg. v. Rahmat* *I. L. R. 1, Bom. at p. 154*; as used in *S. 186, Indian Penal Code*, see *Empress v. Sommanma*, *I. L. R. 15 Mad. at p. 222*; as used in *S. 24 of Stat. 11 and 12 V. C. 21 (Insolvent)* see *Sheo Prasad v. A. B. Miller* *I. L. R. 2 All. 474*; see *Masjidi v. Musst. Ayisha Bibi and another*, *P. R. 1882, No. 135*.

WA

Voluntary—"The antithesis to it is 'involuntary' or compulsory"
—per Lord Esher, *M. R. in Art Union of London v. Overseers of Sovoy*, [1894], 2 Q. B. at p. 614 C. A.

Voluntarily causing hurt—Defined Act 45, 1860, S. 321; Act 15, 1887 S. 3 (6); Act 5, 1892 S. 2 (6); Regulation 2, 1888, S. 2 (4); Regulation 4, 1890, S. 3 (5).

Voluntarily causing grievous hurt—Defined Act 45, 1860, S. 322.

Volunteers on actual duty—Defined Act 20, 1869, S. 4 (2) [*Inserted Act 10, 1896, S. 2*].

Voyage—Defined Act 14, 1895, S. 5 (3); Act 6, 1884, S. 5 (5); Act 9, 1879, S. 3.

Wager—As used in S. 39 of the *Contract Act* (9 of 1872) should be construed in the same sense in which it is used in the English Law. Cotton L. J. (in *Thacker v. Hardy*, 4 Q. B. D. at p. 695) remarks that the essence of gaming and wagering is that one party is to win and the other is to lose upon a future event which at the time of the contract is of an uncertain nature, but he also points out that there are some transactions in which the parties might lose and gain according to the happening of a future event which does not fall within the phrase; per Fulton J. in *Alami v. Positive Government Security Life Assurance Co.*, I. L. R. 23 Bom. at p. 209.

Wages—Defined 57 V. C. 60, S. 742. The word "wages" "is confined to the earnings of labourers and artisans" while the word *salary* "is used for payment of services of a higher class"—per Grove J. in *Gordon v. Jennings*, 51 L. J. Q. B. at p. 418.

Waiver—As used in Art. 75, Sch. ii., *Limitation Act*. (9, 1871) see *Mumford v. Peel and others*, I. L. R. 2 All. 857.

WA

Wakf—"The correct legal meaning of the term *wakf* which originally means nothing more than *detention*, is an appropriation of a pious or charitable nature"—*per* Melvill J. in *Abdul Ghani Kasim v. Husain Miya Rahmatula*, 10 B. H. C. R. at p. 12.

Ward—Defined, *Act*, 3, 1899, S. 3 (5); *Act* 8, 1890, S. 4 (3).

Ward Roll—Defined, *Bom. Act* 3, 1888, S. 21 (2).

Ware-house—Defined, *Act* 2, 1896, S. 3 (7); *Act* 8, 1888, S. 3 (i); *Beng. Act* 1, 1893, S. 3 (8).

Ware-housing Port—Defined, *Act* 8, 1878, S. 3 (i); *Act* 4, 1857, S. 5.

Warrant—Defined, 33-4 V. C. 52. S. 26.

Warrant-case—Defined, *Act* 5, 1898, S. 4 (1) (w).

Warrant officer—Defined, *Act* 14, 1887, S. 2 (1) (c).

Warranty—"An affirmation at the time of sale is a *warranty*, provided it appears in evidence to have been so intended"—*per* Plowden and Barkley JJ. in *Brigade Surgeon Currie v. Capt. A. DeC. Rennick*, P. R. 1886, No. 41.

Was found—The expression "was found" as used in S. 9 of the *Foreign Jurisdiction and Extradition Act* 21 of 1879, "means not where a person is discovered, but where he is actually present"—*per* Kernbal and Pinhey JJ. in *Empress v. Magan Lal*, I. L. R. 6 Bom. 622.

Waste land—Defined, *Regulation* 6, 1893, S. 2 (5).

Watan—Defined, *Bom. Act* 6, 1887, S. 3.

Watan property—Defined, *Bom. Act* 3, 1874, S. 4.

Watandar—Defined, *Bom. Act* 3, 1874, S. 4.

Water—Defined, *Act 4, 1897, S. 4 (2)*.

Water Course—Defined, *Act 8, 1873, S. 3 (2)*; *Beng. Act 6, 1873, S. 3*; *Beng. Act 2, 1882, S. 3*; *Bom. Act 7, 1879, S. 3 (2)*; *Regulation 8, 1887, S. 2 (6)*—"It cannot be denied that a water-course may mean, and perhaps the more natural meaning of it is, a channel in which water flows"—*per Lord Davey in Remfrey v. Surveyor General of Natal, L. R. [1896], A. C.*; "it may mean also the stream or flow of the water itself, and whether it means the one or the other in any instrument will very naturally depend on the context"—*per Coleridge J. in Doe Dem Earl of Egremont v. Williams, 11 B. B. at p. 700.*

Water-Rent—Defined, *Act 19, 1884, S. 2 (7)*

Water-Revenue—Defined, *Regulation 8, 1887, S. 2 (8)*.

Water-Works—Defined, *Act 19, 1884, S. 2*; *N. and O. Act 1, 1891, S. 2 (e)*; *Bom. Act 3, 1888, S. 3 (t)*.

Week—"Merely means *seven days* and not the particular *seven days* commencing from with Sunday"—*per Wood V. C. in Bazalgatti v. Lowe, 24 L. J. Ch. 368.*

Weights—Defined, *N. and O. Act 1, 1892, S. 2 (3)*; *Regulation 4, 1895, S. 2 (2)*.

Wharf—Defined, *Bom. Act 6, 1879, S. 3 (7)*; *Mad. Act 2, 1886, S. 8 (9)*.

Whatsoever—Negatives qualification and affirms generality—*per Fry L. J. in Duck v. Bates, 13 Q. B. D. at p. 852.*

When not final—As used in *S. 21 of Khoti Act (Bombay Act I of 1880)* see *Gopal Krishna v. Sakhojirav, I. L. R. 18 Bom. 133.*

When there has been an appeal—As used in *art 179, Cl. 2, Sch. ii, Limitation Act (XV, 1877)* "means when a memorandum

of appeal has been presented in Court"—per O'kenealy and Trevelyan JJ. in *Akhoy Kumar Nundy v. Chander Mohan Chathali*, I. L. R. 16 Cal. 250; see also *Sheo Prasad v. Anrudh Singh*, I. L. R. 2 All. 273.

Whenever assets are realized—As used in S. 295 *Civil Procedure Code*, see *Hafez Mahomed Ali Khan v. Damodar Pramanick*, I. L. R. 18 Cal. 242.

Where—As used in S. 45, *Criminal Procedure Code* means "in cases in which" and "by persons by whom"—per Benson J. in *Yalla Gangulu v. Mundi Dali*, I. L. R. 21 Mad. at p. 75.

Which is liable to be contradicted—As used in S. 155 (3) of the *Evidence Act* is equivalent to "which is relevant to the issue"—per Wilson J. in *Khadijah Khanum v. Abdul Karim Shevaji*, I. L. R. 17 Cal. 344.

Who has not appeared--As used in S. 119 of Act 8 of 1859 means "who has not appeared at all"—per Sir Barnes Peacock in *Sahibzada Zainulabdin Khan v. Sahibzada Ahmad Raza Khan* in, 5 I. A. at p. 237.

Whose order thereupon shall be final—As used in S. 6 of Act 9 of 1847 see *Sarat Sundari Debi v. Secretary of State for India*, I. L. R. 11 Cal. 784.

Wholesale—Defined, Act 12, 1896, S. 3 (n); *Beng. Act 7, 1878*, S. 15.

Widow—Defined, Act 1, 1869, S. 21.

Widower—As used in S. 5 of the *Parsi Intestate Succession Act* 21 of 1865 "means a widower relatively to the deceased wife only and without consideration of the fact or possibility of the widower remarrying"—per Jardine J. in *Jehangir Dhanjibhai Surti v. Perozbai*, I. L. R. 11 Bom. p. 1—see also the cases cited therein.

WI

Wild Bird—Defined, *Act 20, 1887, S. 2 (3).*

Wife—Defined, *Act 15, 1865, S. 2.*

Wilful—"That is a word of familiar use in every branch of law, and although in some branches of the law it may have a specified meaning, it generally, as used in courts of law, implies nothing blameable, but merely that the person of whose action or default the expression is used, is a free agent, and that what has been done arises from the spontaneous action of his will. It amounts to nothing more than this that he knows what he is doing and intends to do what he is doing, and is a free agent"—*per Bowen L. J. in In re Young and Harrison's Contract 31 Ch. D. at p. 175.* "It is difficult to lay down any general definition of 'wilful'. The word is relative, and each case must depend on its own particular circumstances."—*per Lopes L. J. in Mayor of London v. Tubb's Contract [1894] 2 Ch. D. at p. 539.*

Wilful misconduct—"Wilful misconduct means misconduct to which the will is a party, something opposed to accident or negligence; the misconduct, not the conduct must be wilful."—*per Bramwell L. J. in Lewis v. Great Western Railway Co, 3 Q. B. D. 206.*

Wilfully—As explained in *Freeman v. Cooke (2 Ex. 654)* by the term *wilfully* "we must understand, if not that the party represents that to be true which he knows to be untrue, at least, that he means his representation to be acted upon, and that it is acted upon accordingly"—*per Turner C. J. in Vishnu v. Krishnan, I. L. R. 7 Mad. at p. 7.*

Will—Defined, *Act 10, 1897, S. 3 (57); Act 5, 1881. S. 3; Act 25, 1838, S. 1; Act 45, 1860, S. 31; Act 10, 1865, ss. 3, 88; Act 1, 1869, S. 2; Mad. Act 1, 1891, S. 3 (3); N. and O. Act 1, 1887, S. 2 (3).*

Wish—As used in the *Indian Divorce Act* 4 of 1869 means an *actually expressed wish* of the person charging abandonment and notwithstanding the resistance or opposition of such person—*Fowle v. Fowle*, *I. L. R.* 4 *Cal.* at p. 276.

Withholding of Receipt—Defined, *Act* 10, 1859, S. 10; *Beng. Act* 1, 1879, S. 12.

Within—It was stipulated in a mortgage-deed that the mortgagor would pay the mortgage debt *within* ten years and redeem the property. It was held by Westropp *C. J.* that the mere use of the word *within* was not a sufficient indication of the intention of the parties that the mortgagor might redeem in a less period than 10 years—*Vadju v. Vadju and another*, *I. L. R.* 5 *Bom.* at p. 24.

Within jurisdiction—As used in sub-section I of S. 151 of *Army Act* 44 and 45 *V. C.* 58 refer to “actions” and not to “persons”—*per* Mitter and Norris *JJ.* in *Shere Ali v. C. L. Prendergart*, *I. L. R.* 13 *Cal.* 143—See also *Wallis and Co. v. Baily*, *I. L. R.* 18 *Cal.* 372.

Within or without the limits of the city—As used in S. 392 of *Madras Municipality Act* 1, 1884, see *Mohamad Mohidin Soit v. Municipal Commissioners for the city of Madras*, *I. L. R.* 25 *Mad.* p. 118.

Without any excuse—As used in the 4th para. of S. 300 of the *Indian Penal Code* means “in the absence of any exculpatory circumstances”—*Suba v. The Empress*, *P. R.* 1888, No. 40 (*crl.*) at p. 104 (*Burney and Rattigan JJ.*)

Without a charge—As used in S. 226 of the *Criminal Procedure Code* (*Act* 10 of 1882) “applies not only to a case in which there is no charge at all, but also to a case in which there is no charge of such an offence as the Sessions Judge or clerk of the

Crown may think the prisoner ought to be tried for"—*per* Sargent C. J., Bayley and Scott JJ. in *Q. E. v. Appa Subhanna Mendre*, I. L. R. 8 Bom. 201.

Without lawful excuse—As used in S. 169, *Civil Procedure Code*, (Act 8, 1859) "means an excuse as would in law justify the refusal to give evidence"—*per* Pearson and Turner JJ. in *Lelekray v. Palu Ram*, N. W. P. H. C. R. (1869) p. 162.

Without prejudice—See *Madhavray v. Gulabbhai*, I. L. R. 23 Bom. at p. 180.

Woman—Defined, Act 45, 1860, S. 10.

Working day—Defined, Act 2, 1896, S. 8. *Explanation*.

Works—Defined, *Beng. Act* 9, 1895, S. 2 (i); Act 3, 1903, S. 2 (g).

Wrecks—Defined, 57-8 V. C. 60, S. 510 (1); Act 7, 1880, S. 71.

Write—Act 5, 1888, S. 4 (7); N. and O. Act 1, 1887, S. 2 (37).

Written—Defined, Act 1, 1879, S. 3; Act 1, 1882, S. 3; Act 10, 1882, S. 4 (e); Act 14, 1882, S. 2; *Beng. Act* 3; 1886, S. 3 (20); *Mad. Act* 4, 1884 S. 3.

Written instrument—See *Omrutta Nath Mitter v. Administrator General of Bengal*, I. L. R. 25 Cal. 54 and *Vasudeo Anant v. Ram Krishn Rao Narayan and another*, I. L. R. 24 Bom. 396.

Writing—Defined, Act 10, 1897 S. 3 (58); Act 1, 1879, S. 3 (21); Act 1, 1882, S. 3; Act 10, 1882, S. 4 (e); Act 14, 1882, S. 2; *Bom. Act* 3, 1886, S. 3 (20); *Mad. Act* 4, 1884, S. 3 (VI.); *Mad. Act* 1, 1891, S. 3 (37).

Wrongful confinement—Defined 45, 1860, S. 340.

Wrongful dispossession—The expression "wrongful dispossession" in Cl. (m) and "wrongfully dispossessed" in Cl. (n) of S. 95

of the *N. W. P. Rent Act* (12, 1881) "does not include a dis-possession by the order of Court, though such order may be subsequently reversed on appeal—*per* Aikman J, in *Thakur Din v. Mannu Lal*, *I. L. R.* 19 *All.* 456.

Wrongful gain—Defined, *Act* 45, 1860. *S.* 23.

Wrongful loss—Defined *Act* 45, 1860, *S.* 23.

Wrongful restraint—Defined, *Act* 45, 1860, *S.* 339.

Wuzeefa—See "Khiraaj"

Yarn—Defined, *Act* 2, 1896; *S.* 2 (4).

Year—Defined *Act* 45, 1860, *S.* 49; *Act* 10, 1865 *S.* 3; *Act* 21, 1866, *S.* 3; *Act* 3, 1878, *S.* 3; *Act* 9, 1889, *ss.* 4 (4), 9 (7); *Act* 10, 1897, *S.* 3 (59); *Beng. Act.* 5, 1876, *S.* 6 (22); *Beng. Act* 9, 1880, *S.* 4; *Beng. Act* 3, 1884, *S.* 6 (19); *Beng. Act* 2, 1888, *S.* 3; *Bom. Act* 5, 1879, *S.* 3 (21); *Bom. Act* 3, 1886, *S.* 3 (4); *Mad. Act* 1, 1884, *S.* 3 (d) (1); *Mad. Act* 1, 1891, *S.* 3 (38); *N. and O. Act* 1, 1887, *S.* 2; *Act* 10, 1897, *S.* 3 (59).

Youthful offender—Defined, *Act* 8, 1897, *ss.* 4, 31.

Zamindar—The early history of the land system shows that in former times there were only two parties substantially interested in the land as far as its produce was concerned, *viz.* the king and the cultivator. There were, no doubt, a number of officers. either on the part of the village or the king, who had an interest in the crop. Those on the part of the king were the officers of the revenue and the civil and military establishments who were frequently provided for by assignments of revenue. There was nothing like a proprietor in the English sense of the term. Those officers who in later times came to be regarded as Zamindars were officials merely, though hereditary. ["The name itself seems

to have been little used, if at all; and the precise period at which it was used cannot be ascertained. There were certain cultivating Brahmans in early times called *bhuinhars* or *bhoomes* and sometimes *Zamindars*; the two names being synonymous in meaning and indicating some connection with the land"]. In places where the village communities were strong, the headmen of the village seem to have dealt with the State direct under the Hindoo titles of *Mokuddum*, *mundals* and *bhuinhars* (or *Zamindars*). In other places the ancient Rajas and the revenue collectors became talookdars and zamindars and collected the revenue as such. They were bound to account for the collections they made or the share of crops they received from the ryots to the growing power in whose service they were employed and for which service they were in the enjoyment of certain remuneratory advantages. During the Mahamadan period their hereditary character was questioned. Attempts were made to check their growing power and influence and it was not till after Nadir Shah's invasion in 1793 that they got a recognition of their hereditary character. Their right to engage with the Government for the payment of revenue and to collect the Government share of the produce and to pay over to Government what had been engaged for, after deducting their emoluments, was gradually established. Ultimately they came to pay the state a fixed sum which was loosely estimated and to appropriate the surplus whether equivalent to the allowances or more. Although their rights originated in a *sanad* from the State, in later times they succeeded to their zamindari as a matter of course, simply by inheritance, sometimes taking a *sanad* afterwards and sometimes never taking at all. It was not until *Permanent Settlement* (in 1793) that the Zamindars' full power of alienation was established. In 1865, however, the majority of the Judges of the Calcutta High Court appear to have held (in the *Great Rent Case B. L. R. Supplement Vol. 214*) that a right of the zamindar was not an absolute right

to the soil as against the subordinate holders. Mr Justice Macpherson remarks: "As regards the legislation from 1793 down to Act 10, it in my opinion, shows clearly that the zamindar never was, and never was intended to be, the absolute proprietor of the soil. He never was proprietor in the English sense of the term, or in the sense that he could do with it as he pleased; for certain classes of ryots have at all times had rights quite inconsistent with absolute ownership, having rights which entitled them to remain in occupation so long as they paid their rents." Seton Karr *J.* remarks: "Neither by Hindu, by Mahamedan, or by Regulation law was any absolute right of property in land vested in the Zamindar to the exclusion of all other rights, nor was any absolute estate, as we understand the same in England, created in favour of that class of persons. The ryot has by custom, as well as by law, what we may term a beneficial interest in the soil." Norman *J.* remarks. "These provisions appear to me to show that although the Zamindars were by the Regulations constituted owners of the land, such ownership was not absolute. The Regulations which created a right of property in the Zamindars do not recognize any absolute right in them to fix the rents of the land at their own discretion." Defined, Act 20, 1881, S. 3 (amended by Act 11, 1884, S. 2); Act 16, 1882, S. 2; Act 20, 1896, S. 2 (3); Bengal Act 6, 1890, S. 1; Beng. Act 6, 1873, S. 3; Beng. Act 5, 1875, S. 2; Beng. Act 2, 1882, S. 3; Beng. Act 5, 1887, S. 2.

Zamindari apni—The words *Zamindari apni* when used in a mortgage deed are sufficiently certain to prevent the mortgage from being void for uncertainty—*per* Straight and Brodhurst *JJ.* in *Shadi Lal v. Thakur Das*, *I. L. R.* 12 *All.* at p. 178.

APPENDIX.

A.

Abet—Defined *N. and O. Act 1, 1904, S. 4, Cl. (1)*.

Account—In *Art. 89 Sch. II of the Limitation Act* the word "account" "is used in its legal sense and is not confined merely to rendering an account by the agent of what he has done with the monies, but also includes the payment of any balance, which might be found due from him upon taking the accounts"—*per Mookerjee J. in Shib Chandra Roy v. Chandra Narain Mookerjee I. L. R. 32 Cal. at p. 725.*

Accrual of the right to sue—As used in *Cl. 2, S. 634 of the Calcutta Municipal Act (3 of 1899)* applies to the date when the month's notice expires.—*The Corporation of Calcutta v. Shyama Charan Pal and others 9 C. W. N. at p. 220.*

Act—Defined, *N. and O. Act 1, 1904, S. 4, Cl. (2)*.

A decision settling a rent—As used in *S. 109A of Bengal Tenancy Act* see *Ramani Prasad Narain Singh v. Mahanth Adaiya Gossain I. L. R. 31 Cal. at p. 382.*

Adjustment—As used in *S. 258, Civil Procedure Code* see *Erusuppa Mudaliar v. Commercial and Land Mortgage Bank Ltd. I. L. R. 23 Mad. at p. 380.*

Adverse possession—Under the Roman Law possession was not lost in land unless the possessor had notice of his physical power to deal with it having been destroyed ("*Savigny on Possession*," *Bk. III, S. XXXV*)—When the possessor is himself prevented from dealing with the land, *i. e.*, when there is *dejectio* there can be no doubt about his knowledge of its loss. But actual

APPENDIX—A.

knowledge is not necessarily material in all cases if there be the means of such knowledge—(*Womesh Chander Gupto v. Raj Narain Roy*, 10, *W. R.* at pp 16 and 17; *Bejoy Chunder Banerjee v. Kally Prosonno Mukerji* *I. L. R.* 4, *Cal.* 327)—But “the possession must have been used openly and without any effort made or step taken to produce concealment” *Rains v. Dixon*, 14 *Ch. D.* 533 at pp. 540, 541.

“There must be an adverse act”—*Searly v Tottenham Railway Co.* *L. R.* 5 *Eq.* 409 at p. 412”—“and nothing that would lead the owner to suppose that his rights remain intact”—*Adnam v. Earl of Sandwich* 2 *Q. B. D.* 485. “And it is fully established that when there is no act of taking possession, something more than a mere adverse claim is necessary to make possession adverse”—*per Batty J.* in *Tarubai v. Venkatrao* *I. L. R.* 27 *Bom.* at pp. 52 and 53.

Affidavit—Defined *N. and O. Act* 1, 1904 *S.* 4, *Cl.* (3).

Agent—As used in *S.* 3 of *Act* 24 of 1839 is not used in its technical and legal sense—*per Sir Charles White C. J.* in *Maharajah of Jeypur v. Pappayamma*, *I. L. R.* 23 *Mad.* at p. 345.

Agra—Defined *N. and O. Act* 1, 1904, *S.* 4, *Cl.* (4).

Agricultural year—Defined *N. and O. Act* 2, 1901, *S.* 4, *Cl.* (10).

Agriculture—“The term ‘agriculture.’ however, is capable of being applied to tillage of the soil in the widest sense and after considering the context in which the expression ‘agricultural purposes’ is used in the *Transfer of Property Act viz.*, in sections 37, 106 and 108, I cannot say that it was intended to limit its denotation in any way. I think I was wrong in the opinion I expressed with regard to coffee garden and that a lease of a betel garden is a lease for ‘agricultural purposes’ within the meaning of the *Act*”—*per Shephard J.* in *Murugesu Chetti v. Chinna Thambi Goundan*, *I. L. R.* 24, *Mad.* at p. 426.

APPENDIX—A.

All the parties to a suit—As used in *S. 506, Civil Procedure Code* see *Pitam Mal v. Sadik Ali* *I. L. R. 24 All. at p. 230*.

Ancestral land—See the *Notification* in the *N.-W. P. Gazette* 671 dated 30th September 1880 and subsequent notifications.

And—or—Whether instrument in which the word occurs is a will or a deed “or” may be construed to mean “and”, and “and” may be construed to mean “or”, if such a construction is necessary to give effect to the intention of the party by whom the word is used—*White v. Supple* 2 *Dr. and Was* 47.

Annual value—Defined *N. and O. Act 1, 1900 S. 3, Cl. (10)*; *N. and O. Act 3, 1904, S. 2, Cl. (1)*.

Any other act of bad faith—As used in *S. 351, Cl. (d), Civil Procedure Code* see *Gaya Din v. Hira Lal*, *I. L. R. 26, All. 517*.

Any other reasonable cause—The words “any other reasonable cause” as used in *S. 13, Cl. (f) of the Legal Practitioner's Act* “are not confined to misconduct of which a practitioner is guilty in his professional capacity, but embrace all causes which may afford reasonable ground for his suspension or dismissal”—*Le Mesurier v. Wajid Husain*, *I. L. R. 29 Cal. 890*.

A person who would have succeeded—As used in *ss. 13 and 14 of Oudh Estates Act of 1869* see *Thakurain Balraj Kuar v. Rai Jagatpal Singh*, 8 *C. W. N. p. 699*.

Appeal—As used in *S. 5, Limitation Act* does not include an application for leave to appeal in *forma pauperis*—*per Maclean C. J. and Geidt J. in Surat Chunder Dey Chaudhary v. Brojeshwary Dass*, 8 *C. W. N. p. 906*; *S. C. I. L. R. 30 Cal. p. 790*.

APPENDIX—A.

Appellate jurisdiction—As used in *S. 15* of the *L. P.* of 1865 is not restricted to its strict and technical sense—*Abdul Karim v. Municipal Officer Aden*, *I. L. R.* 27 *Bom.* at *p.* 583.

Applying in accordance with law—The same construction was put upon these words by Banerji *J.* (in *Munawar Husain v. Jani Bijai Shankar*) as was placed by Straight and Tyrrell *J. J.* in *Chattar v. Nawal*, *I. L. R.* 12 *All.* 64 quoted in the body of the book—See *All. L. J. Vol. 2*, *p.* 376.

Arrear—Defined *Act 9*, 1898, *S. 2* (2).

Assets—"It is usually defined as meaning and including property of a deceased person chargeable with and applicable to the payment of his debts and legacies." "The entire rents of a revenue-paying estate when collected by the Administrator-General became the property of the estate in his hands." "In this sense the property of a deceased person applied in payment of revenue is an 'asset' within the meaning of the *Administrator General's Act* (2 of 1874)"—*per Sale J.* in *Watkins v. Sharat Chander Ghose Mullick and others* *I. L. R.* 51, *Cal.* at *p.* 583; as used in *S. 295*, *Civil Procedure Code* means the proceeds of the sale of the property which is sold in execution of the decree—*per White C. J.* in *Ramanathan Chettier v. Subramania Sastrial* *I. L. R.* 26 *Mad.* 179 at *p.* 181.

Assistance—The "assistance" referred to in the former part of *S. 187*, *Indian Penal Code* "is *ejusdem generis*" with the various forms of assistance specified in the latter half. The 'assistance' must have some direct personal relation to the execution of the duty by the public officer." It "implies that the party who assists is doing something, which in ordinary circumstances the party assisted could do for himself"—*In the matter of Ramaya Naika*, *I. L. R.* 26 *Mad.* 419 *F. B.*

Assistant Collector—Defined *N. and O. Act 1*, 1904, *S. 4*, *Cl.* (5); *N. and O. Act 2*, 1901, *S. 4*, *Cl.* (13).

APPENDIX—A.

Associated together—As used in ss. 107, 117 (4), *Criminal Procedure Code*, applies to persons acting in concert whether that concert is due to mutual agreement amongst themselves or to the orders of a common master—*Shrikant Shaha and others v. The Emperor*, 9 C. W. N. P. C. C. XXX (Notes).

Attested—"An instrument of mortgage" can be treated as attested under the provisions of S. 59 of the *Transfer of Property Act* when the witnesses sign it in the presence of the mortgagor after having received from him a personal acknowledgement of his signature"—per Cowe J. in *Ramji v Bai Parvati* I. L. R. 27 Bom. at p. 95; *Abdul Karim v. Salemun*, I. L. R. 27, Cal. 190 (Ghose and Stevens J. J.).

B.

Barrister—Defined, *N. and O. Act* 1, 1904, S. 4, Cl. (6).

Bazar—Defined, *Beng. Act* 3, 1899, S. 3 (1).

Between the same parties—As used in S. 13, *Civil Procedure Code* see *Mangni Ram v. Syed Mohammad Mehdi Husain Khan*, 8, C. W. N. p. 30.

Bind down—See *Sukru Dosadh v. Ram Pergash Singh*, I. L. R. 30 Cal. 443.

Board—Defined, *N. and O. Act* 3, 1899, S. 3 (1); *N. and O. Act* 2, 1901 S. 4 (13),

Board of Revenue—Defined *N. and O. Act* 1, 1904, S. 4 (7).

Boiler—Defined *N. and O. Act* 1, 1899, S. 2; *Act* 1, 1899, S. 2.

Bound—Defined, *Act* 3, 1899, S. 3 (1); *Act*. 3, 1898 S. 2 (4).

Brother—Defined *Act* 1, 1869, S. 22, Cl. 6. As used in Cl. (6) S. 22, of *Act* 1869 (*Oudh Estates*) includes brother born of a

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different mother—*Thakurain Balraj Kuar v. Rai Jagatpal Singh*, 8 C. W. N. p. 699.

Budget grant—Defined, *Beng. Act 3*, 1899, S. 3 (2).

Building time—Defined, *Beng. Act 3*, 1899, S. 3 (3).

Burma—Defined, *Act 13*, 1898, S. 3 (b).

Bustee—Defined, *Beng. Act 3*, 1899, S. 3 (5).

Bustee land—Defined, *Beng. Act 3*, 1899, S. 3 (6).

C.

Calcutta—*Beng. Act 3*, 1899, S. 3 (7).

Carriage—Defined, *Beng. Act 3*, 1899, S. 3 (8).

Cart—Defined, *Beng. Act 3*, 1899, S. 3 (9).

Case—As used in S. 57, *Stamp Act 2*, 1899, “means a matter which has to be disposed of by the Revenue authorities conformably to the judgment of the High Court on the case referred to it for opinion by the Revenue authorities”—*per* Benson and Bhashyam Ayyanagar J. J. in *Reference under Stamp Act*, I. L. R. 25, Mad. at p. 752; as used in S. 17, *Bengal N.-W. P. and Assam Civil Courts Act* (12, 1887) includes a suit and an appeal is a “proceeding” in relation to a case—*per* Banerji and Richards J. J. in *Allahdia Begam and another v. Kesri Mal*, 2 All. L. J. p. 576.

Cause of action—As used in Cl. 12, of the *Letters Patent* see *Deep Narain Singh v. Muinnie Distert*, 8, C. W. N. p. 207; as used in S. 17, *Civil Procedure Code* “does not necessarily mean the whole cause of action”—*per* Banerji and Aikman J. J. in *Banke Behari Lal v. Pokha Ram* I, L. R. 25 All. 48.

Cess—See *Chutton Mahton v. Tilakihari* I. L. R. 17, Cal. 181 P. C.

APPENDIX—C.

- Chapter**—Defined, *N. and O. Act 1, 1904 S. 4 (8)*.
- Charge**—Defined, *Act 5, 1898, S. 4 (1) (c)*.
- Charges**—As used in *S. 211*, of the *Indian Penal Code*, “means something different from ‘gives information’”—*per White C. J. and Subramania Ayyar J. in Rayan Kutti v. Emperor I. L. R. 26 Mad. 640*.
- Chief Justice**—Defined *N. and O. Act 5, 1898, S. 4 (1) (d)*.
- Claimable**—As used in *S. 26, Act 1, 1879* means “claimable in a court of justice”—*per Rampini and Bodilly J. J. in Harendra Lal Roy Chaudhary v. Tarini Charan Chakravati I. L. R. 31 Cal. at p. 810*.
- Clearing**—As used in *S. 21 (a)* of the *Madras Forest Act 1882* “means something in the nature of the removal of trees or shrubs”—*per White C. J. and Benson J in Emperor v. Venkanna Prabhu I. L. R. 26 Mad. 470*.
- Clerk of the Crown**—Defined *Act 5, 1898, S. 4 (1) (e)*.
- Cognizable offence**—Defined *Act 5, 1898, S. 4 (1) (f)*.
- Collector**—Defined, *N. and O. Act 1, 1904, S. 4 (9)*.
- Comes**—As used in *S. 33, Stamp Act 2 of 1899* “is sufficiently wide to include the production of documents under a search-warrant”—*per Benson and Bhashyam Ayyangar J. J. in King Emperor v. Babu Kuppayyan I. L. R. 25 Mad. at p. 528*.
- Commencement**—Defined, *N. and O Act 1, 1904, S. 4 (10)*.
- Commencement of the hearing**—As used in *S. 26, Cl. (8), Civil Procedure Code*, see *Kishori Gir v. Ram Narain Gir, 8 C. W. N. p. 77*.
- Commissioner**—Defined, *N. and O. Act 1, 1904, S. 4 (11)*.
- Commissioner of Police**—Defined, *Act 5, 1898, S. 4 (1) (g)*.

APPENDIX—C.

Committee—Defined, *Act 16, 1903, S. 2 (b)*

Competent to contract—Defined, *N. and O. Act 2, 1900 S. 2.*

Complaint—Defined. *Act 5, 1898, S. 4 (1) (h)*—As used in *S. 199, Criminal Procedure Code*, see *Tara Prasad Laha and another v. King Emperor*, 8 *C. W. N.* p. 17.

Compulsory deposit—The contribution which the employe of a Railway Company makes towards the Railway Provident Fund governed by the provisions of the *Provident Funds Act (9 of 1897)* is a 'compulsory deposit' within the meaning of *S 4 of the Provident Funds Act* as amended by *Act 4 of 1903—Veerchand v. B. B. and C. I. Railway Co. I. L. R. 29 Bom. 259*; "is not merely descriptive of the sum deposited, but is a term of art, which by virtue of legislative provision includes that which is not within its natural meaning"—*per Jenkins C. J. Ibi* at p. 263.

Connected privy—Defined, *Beng. Act 3, 1899, S. 3 (10)*

Co-sharer—As used in *S. 12 of the Punjab Laws Act* "refers to co-sharers holding a similar title"—An *ala malik* cannot be considered a co-sharer with *adna malik*—*per Clark C. J. in Abdur Rab Khan v Fazal Mohammad, P. R. 1904, No. 64.*

Court—The Commissioners appointed by the Viceroy and Governor-General of India in Council for the purpose of inquiring into the truth of an imputation against a Maharajah is not a "Court" from which an appeal lies to His Majesty in Council—*In re Maharajah Madhava Singh (Maharajah of Punnah), I. L. R. 32 Cal. p. 1 P. C.*

Contentious suit—"To constitute a suit contentious (as used in *S. 52 Transfer of Property Act*) it must be a suit which upon the face of the proceedings would appear to involve some contention as to the right of one or other of the parties in the immoveable property which is claimed in the suit, and whether there is

APPENDIX C.

such a contention may be gathered from the plaint itself or the defence of the defendant when it is put in"—*per Ghose and Pargitter J.J. in Upendra Chandra Singh v. Mohri Lal Marwarri, I. L. R. 31, Cal. at p. 752.*

Creditor—As used in S. 53, *Transfer of Property Act* does not necessarily mean a judgment-creditor—*per Jenkins C. J. in Ishwar Tinappa v. Devar Venkappa, I. L. R. 27 Bom. at p. 149.*

Crops and other produce of land—The words "crops and other &c." as used in sub-section (2) of S. 145 of the *Criminal Procedure Code* mean crops or other produce of land attached to the land, and not crops which have been severed—*per Stevens and Harington J. J. in Ramzan Ali v. Janardhan Singh, I. L. R. 30 Cal. at p. 111.*

Cubical extent—Defined, *Beng. Act 3, 1899, S. 3 (11).*

D.

Dangerous disease—Defined, *Beng. Act 3, 1899, S. 3 (12).*

Debts—As used in S. 266, *Civil Procedure Code*, see *Nathasami Naidu v. Prince Alagia Manavalu Simvala Raja I. L. R. 26 Mad. 423.*

Decree for money—Every decree by virtue of which money is payable is to that extent a decree for money though other relief may be granted by the decree—*per Tottenham and Agnew J. J. in Hart v. Tarra Prasanna I. L. R. 11, Cal. 718.* But the Calcutta High Court has recently held that a mortgage decree is not a decree for money referred to in ss. 230 and 295, *Code of Civil Procedure*—see *Fazil Huwaidar v. Krishnabandhu Rai, I. L. R. 25 Cal. 280.* The same is the view of the Allahabad High Court—see *Ram Charan v. Sheobarat I. L. R. 16 All. 418;* *Jadu Nath Prasad v. Jagmohan Das I. L. R. 25 All. 541.*

APPENDIX D.

The Madras High Court takes a different view—See *Kommachi Kather v. Pakker I. L. R.* 20 *Mad.* 107.

Decree or order—As used *S. 38* of the *Presidency S. C. C. Act*—See *Chinnathambi Mudaliar v. Veerabadriah Naidoo I. L. R.* 26 *Mad.* 163.

Default—The word “default” “does not necessarily imply any moral obliquity or any breach of contractual obligation. It simply means non-payment, failure or omission to pay”—*Fakir Chander Datt v. Ram Kumar Chutterji*, 8 *C. W. N.* at p. 725 *P. C.*

Defraud—“May or may not imply deprivation, actual or intended”—*per Henderson J. in Baburam Rai v. Emperor I. L. R.* 32 *Cal.* at p. 779.

Delivery—As used in *S. 72, Indian Railways Act* (9 of 1890) “refers to a physical event, an important element of which is that, whatever is delivered passes from the physical custody of one man to the physical custody of another”—*per Stephen J. in Jalim Singh Kotary v. Secretary of State for India, I. L. R.* 31, *Cal.* at p. 958.

Depot—Defined, *Beng. Act 3, 1899, S. 3* (18).

Dharam—See *Musst. Parbati Bibi v. Ram Baran Upadhya*, 8, *C. W. N.* p. 653 and the cases cited therein.

Director-General—Defined *Act 6, 1898, S. 2* (a).

Distinct subjects—As used in *S. 17 Court Fees Act, 1870*, see *Durga Prasad v. Purandar Singh I. L. R.* 27 *All.* 186.

District Judge—Defined, *N. and O. Act 1, 1904 S. 4* (12).

District Magistrate—Defined, *Act 3 1898, S. 2* (5).

Division Court—As used in *S. 39 Letters Patent* does not apply only to a Division Court sitting on the Original side—*Prasanna Lahiri v. Jitindro Mohan Lahiri* 9 *C. W. N.* p. 366.

• APPENDIX D.

Document—Defined, *N. and O. Act 1, 1904, S. 4 (13)*—is used in a general sense in *S. 74 (a) of the Registration Act—Nawab v. Arjun Das P. R. 1904 No. 13 at p. 54.*

Domestic Building—Defined, *Beng. Act 3, 1899, S. 3 (14).*

Done or intended to be done—As used in *S. 4, Epidemic Diseases Act 3, 1897* “do not include omissions”—*per Stephen J. in Ram Lal Mistry v. R. T. Greer & Co. W. N. p. 681.*

Drain—Defined, *N. and O. Act 1, 1900, S. 3 (3); Beng. Act 3, 1899 S. 3 (15).*

Drug—Defined, *Beng. Act 3, 1899 S. 3 (17).*

Due course of law—“To read the words ‘due course of law’ (in *S. 9 Specific Relief Act*) as merely equivalent to the word legally’ is, we think, to deprive them of a force and significance which they carry on their very face. For a thing, which is perfectly legal, may still be by no means a thing done ‘in due course of law;’ to enable this phrase to be predicated of it, it is essential, speaking generally, that the thing should have been submitted to the consideration and pronouncement of the law, and ‘due course of law’ means, we take it, the regular normal process and effect of the law operating on a matter which has been laid before it for adjudication. That, in our opinion, is the natural and primary meaning of the phrase, though it may be applied in a derived or secondary sense to other proceedings held under the direct authority of the law; in this sense it may be said for instance, that revenue or taxes are collected in due course of law”—*per Batchelor J. in Rudruppa v. Narsingh Rao I. L. R. 29 Bom. at pp. 216 and 217.*

Dwelling house—Defined, *Beng. Act 3, 1899, S. 3 (18).*

E.

Enactment—Defined, *N. and O. Act 1, 1904, S. 4 (14).*

APPENDIX—E.

Entire Estates—As used in S. 3, of *Regulation* 26 of 1802 “do not mean all the estates of the individual. The plural ‘estates’ has reference to the plural persons’ and when used with reference to one person, must be read in the singular, ‘estate’”—*per* Davies and Moore J. J. in *Navayana Raja v. Ramachandra Raja* I. L. R. 26 Mad. at p. 525.

Erect or re-erect any building—Defined, *N. and O. Act* 1, 1900, S. 3 (9).

European British subject—Defined, *Act* 15, 1903, S. 2 (a).

Every settlement of rent or decision of a dispute by a Revenue Officer—As used in S. 9, *Beng. Tenancy Amendment Act* (3, B. C. of 1898) see *Radha Kishore Manikya v. Durganath Bhattacharjee*, I. L. R. 32 Cal. 162.

Explosion—Defined, *Act* 16, 1903, S. 2 (g).

Explosive—Defined, *N. and O. Act* 1, 1900, S. 3 (8).

Express delivery—Defined, *Act* 6, 1898, S. 8, *Explanation*.

Extradition offence—Defined, *Act* 15, 1903, S. 2 (b).

F.

Failure and success—“The phrases ‘failure’ and ‘success’ in relation to a suit, we understand to be used in ss. 411 and 412, not as mere opposite terms but as contradictories. Failure is a universal and not a particular negative of success. Any modicum of success would prevent the result of a suit from being a failure within the meaning of S. 412. An entire absence of success is failure. When a suit is compromised, the plaintiff cannot be said to have failed within the meaning of the section. The fact that he has obtained an agreement which he is willing to accept prevents the result of his suit from depriving him entirely of all success. But if there is absolutely nothing gained by the suit

APPENDIX—F.

so that the result is to leave the plaintiff in *statu quo ante* or as here, by reason of his liability for costs, in a worse position it would, we think, be a strain of language to say that the plaintiff had obtained any success of any kind or degree by his suit"—*per Batty J. in Secretary of State v. Narayan Balkrishna I. L. R. 29 Bom. at pp. 104, 105.*

Final order or decree—The proper test in order to determine the meaning of the word "final order or decree" is to be found in the determination of what was really the question before the Court when the decree or order was made—*Rahmubhoy Habi-bhoy v. Turner, L. R. 18 I. A. p. 6 S. C. I. L. R. 15 Bom. p. 930*; as used in *S. 595, Civil Procedure Code*, does not mean last decree but the decree determining rights finally—*Chundi Datt Jha v. Padmanand Singh Bahadur I. L. R. 22 Cal. at p. 930. Final order or decree of the appellate court*—As used in *Cl 2, Art. 179, Sch. II, Limitation Act* see *Ralla Mal v. Musst. Malan and others, P. R 1905, No. 8.*

Fixture—Jenkins *C. J.* thus observes: "The word *fixture* is one of common use in English law, though Lord Campbell in *Wiltshier v. Cottrell* (22 *L. J. Q. B.* 117) said it had no precise meaning." "In India the word is not so familiar." "Though the word *fixture* does not necessarily in England mean affixed to the freehold, that is the sense it bears in ordinary parlance," and "for anything to be a *fixture*," "it must be 'attached to the earth' as that expression is defined in *S. 3 of the Transfer of Property Act*—*Chaturbhuj v. Bennett I. L. R. 29 Bom. at p 343.*

Flashing point—Defined, *Act 8, 1899, S. 3 (1).*

Foreign State—Defined, *Act 15, 1903, S. 2 (c).*

Fraud and Fraudulently—As used in the *Indian Penal Code* see *Kotamraju Venkatryadu v. Emperor I. L. R. 28 Mad. 90-*

APPENDIX—F.

Frivolous and vexatious—As used in *S. 250, Civil Procedure Code*, “should in my opinion be regarded as *ejusdem generis*” per Prinsep J. in *Beni Madhub Kurmi v. Kumud Kumar Biswas* *I. L. R. 30, Cal. at p. 131.*

G.

Garden Sardar—Defined *Act 6, 1901, S. 2 (h).*

General Officer of the Command—Defined, *Act 7, 1903, S. 2 (d).*

Good cause—See *Karupana Servagaran v. Sina Gounden, I. L. R. 26 Mad. 480.*

Granting refusing or revoking a certificate—An order granting a certificate conditionally on the giving of security is not an “order granting &c.” within the meaning of *S. 19, Succession Certificate Act—Nannhu Mal v. Gulabo, I. L. R. 26 All. 173.*

H.

High Court—Defined, *N. and O. Act; Act 15, 1903, S. 2 (d)*; as used in *S. 195 Criminal Procedure Code* see *Deenobandhu Nandy v. Sreemuty Harramuty Dassee, 8, C. W. N. 797.*

Holding—Defined, *Act 9, 1898, S. 2 (2); N. and O. Act 2, 1901 S. 4 (9).*

I.

Immoveable property—Standing crops are “immoveable property” within the meaning of the *Limitation Act*—per Maclean C. J. in *Hari Charan Fadikar v. Hari Kar I. L. R. 32 Cal. 459.*

APPENDIX—I.

Improvement—Defined, *N. and O. Act 2, 1901, S. 4 (12)*.

In accordance with law—As used in *Art. 179 Limitation Act* see *Adhar Charan Das v. Lal Mohan Das 1, C. W. N. at p. 678*.

Inclined to hold—The expression "inclined to hold" is not sufficient in law to constitute a finding—see *Manshab Ali v. Govind Ram Das, 9, C. W. N. p. cclv. (Notes)*.

Inferior proprietor—Defined, *N. and O. Act 3, 1904, S. 2 (2)*.

In future—The words "in future" in an entry relative to pre-emption in a wajib-ul-arz cannot be treated as evidence of contract rather than of custom—*Sewak Singh v. Girja Pande 2, All. L. J. p. 6*.

Inhabitant—Defined, *N. and O. Act 1, 1900, S. 3 (5)*.

Inspector—Defined, *Act 1, 1899, S. 2*.

Instruments of gaming—As defined, in *S. 3, of the Bombay Prevention of Gambling Act (4 of 1887)* includes a single page of paper for registering wagers—*per Batty and Aston J. J. in Emperor v. Lakhamsi Malsi I. L. R. 29 Bom. 264*.

J.

Judicial proceeding—Defined, *Act 5, 1898, S. 4 (1) (m)*. As used in *S. 476, Criminal Procedure Code* see *Hari Charan Mukerjee v. King Emperor I. L. R. 32 Cal. at p. 372*.

K.

Kept—As used in *S. 7 of the Bombay Gambling Act (4, 1887)* see *Emperor v. Watia Musaji, I. L. R., 29 Bom. 226*.

Kidnapping—As used in *Indian Penal Code* see *Korban v. King Emperor I. L. R. 32 Cal. 444*.

APPENDIX—L.

Lambardar—Defined, *N. and O. Act 2, 1901, S. 4 (13).*

Land—Defined *Act 7, 1903, S. 2 (a); Act 18, 1898, S. 2 (5); N. and O. Act 3, 1904 S. 2 (3) N. and O. Act 2, 1901 S. 4 (2).* As used in *S. 6 of Act 10 of 1859* means cultivated land, and does not include a tank regarded as land covered with water—*per Geidt and Mukerjee J. J. in Mahananda Chakarvati v. Mongala Keotani, I. L. R. 31 Cal. 937; As used in S. 2, Cl. 3, Punjab Alienation of Land Act, 1900 see Nur Muhammad v. Tiloka Mal and another P. R. 1905 No. 14.*

Landholder—Defined, *N. and O. Act 2, 1901, S. 4 (5).*

Landlord—Defined, *Act 9, 1898, S. 2 (16).*

Lawful authority—As used in *S. 183, Indian Penal Code*, see *Emperor v. Ganeshi Lal, I. L. R. 27 All. 258.*

Lawful guardianship—See *Korban v. King Emperor I. L. R. 32 Cal. 444.*

Legatee—As used in *S. 2, Act 1, 1869* see *Balraj Kuar v. Jagatpal Singh, I. L. R. 26, All. 393.*

Licensee—Defined, *Act 3, 1903, S. 2 (k).*

Living in adultery—As used in *S. 488 (4), Criminal Procedure, Code*, see *Kallu v. Kaunsilia, I. L. R. 26 All. 326.*

Local authority—Defined, *Act 10, 1897, S. 3 (28).*

Local Government—Defined, *Act 10, 1897, S. 3 (29).*

Lower Burma—Defined, *Act 13, 1898, S. 3 (d); Act 6, 1900 S. 2 (c).*

M.

Mahal—Defined, *N. and O. Act 3, 1899, S. 3 (2); N. and O. Act 2, 1901, S. 413; N. and O. Act 1, 1908 S. 2 (c).*

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Malkana—See *Bageshwari Prasad Singh v. Mohammad Gohar Ali Khan*, I. L. R. 31, Cal. 256 P. C.

Muhtarfa—"That is a word which is very commonly in use in Madras and Bombay. It indicates among other things a trade tax"—per Blair J. in *Muhammad Abdul Haie v. Nathu I.* L. R. 27 All. at p. 184.

Minor—Defined, *N. and O. Act 3*, 1899, S. 3 (6); *N. and O. Act 2*, 1901, S. 4 (13).

Municipal tax—Defined, *N. and O. Act 2*, 1899, S. 2 (2).

Municipality—Defined, *N. and O. Act 1*, 1900, S. 3 (1); *Act 16*, 1903, S. 2 (a).

N.

New defendant—As used in *S. 22 Limitation Act*, see *Peary Mohan Mukerjee v. Narendra Nath Mukerjee* I. L. R. 32, Cal. at p. 599.

New plaintiff—As used in *S. 22, Limitation Act*, see *Ramjoynath Sircar v. Shambhu Nath Shukla*, 9 C. W. N. 883.

Notification—Defined, *N. and O. Act 1*, 1900, S. 3 (2); as referred to in the end of S. 8 of *Regulation 17* of 1806, is the time when the mortgagor is noticed that he has a year to redeem, and that it does not refer to the date of the *parwana* which orders him to be noticed—*Gokul Chand and others v. Muhammad Munir Khan* P. R. 1904, No. 46.

O.

Occupier—Defined, *N. and O. Act 1*, 1900, S. 3 (7).

Offence—Defined, *Act 15*, 1903, S. 2 (e).

APPENDIX.

On such terms as it thinks fit—The words “On such terms as it thinks fit” as used in *S. 344, Criminal Procedure Code, (1898)* are “perhaps not incapable of being construed to give a Criminal Court this power (of allowing costs of adjournment) when granting an adjournment”—*per Chatterjee J. in Crown v. Shuldham, P. R. 1904, No. 20 (Crl.)*.

Order—As used in *S. 86, Probate and Administration Act*, does not refer to such an order only as is referred to in *S. 585, Civil Procedure Code—Sheikh Azim v. Chandra Nath Naindas, 8 C. W. N. p. 748*.

Owner—Defined, *N. and O. Act 1, 1899, S. 2; N. and O. Act 1, 1900 S. 3 (6); Act 16, 1903, S. 2 (d)*.

P.

Pay—Defined, *N. and O. Act 2, 1901, S. 4 (4)*.

Person aggrieved—A brother living with his sister is a “person aggrieved” within the meaning of *S. 198, Criminal Procedure Code (Act 5, 1898)—per Amir Ali and Handley J. J. in Thakur Das Sur v. Adhar Chandra Missri, I. L. R. 32 Cal. 425*.

Personally interested—As used in *S. 556, Criminal Procedure Code* see *Emperor v. Mohan Lal I. L. R. 27 All. 25*.

Practices in any Court—As used in *S. 32, Legal Practitioner's Act* does not mean habitually acts as pleader or mukhtar—*Emperor v. Beni Bahadur I. L. R. 26 All. 380*.

Pradhan—Means “principal” and not “direct”—*Gopal Prasad Bhakat v. Raghunath Deb I. L. R. 32, Cal. at p. 160*.

Prescribed—Defined, *Act 16, 1903, S. 2 (e)*.

Previous holder—See *Fakir Chander Dutt v. Ram Kumar Chatterji 8 C. W. N. p. 721*.

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Prime mover—Defined, *N. and O. Act 1, 1899, S. 2.*

Private debt—Defined, *N. and O. Act 1, 1903, S. 2 (a).*

Property—A cancelled cheque falls within the meaning of the term "property" as used in S. 405, *Indian Penal Code*—per Knox J. in *Emperor v. Maula Bakhsh I. L. R. 27 All. 28*; as used in S. 420, *Indian Penal Code* includes money—per Pratt and Handley J. J. in *Birendra Lal Bhaduri v. Emperor I. L. R. 32 Cal. at p. 26.*

Proprietor—Defined *N. and O. Act 3, 1899 S. 3 (4); N. and O. Act 1, 1903, S. 2 (d).*

Public debt—Defined, *N. and O. Act 1, 1903 S. 2 (6).*

Public functions—The term "public functions" as used in S. 186 *Indian Penal Code*, does not cover *ultra vires* acts of a public servant—per Clark C. J. and Rattigan J. in *King Emperor v. Himayat Ali P. R. 1905 No. 10, (Crl.).*

Public Policy—"Public policy is always an unsafe and treacherous ground for legal decision"—per Lord Davey in *Janson v. Driefontien*, [1902] *A. C. 484 at p. 500.* See also *Fraser and Company v. The Bombay Ice Manufacturing Company, I. L. R. 29 Bom. 107.*

Public servant—A sub-registrar's clerk paid out of the allowance given to him is not a public servant within the meaning of S. 21, *Indian Penal Code*—per Henderson and Geidt J. J. in *Bhagwati Sakai v. Emperor I. L. R. 32 Cal. 664.*

Purchase money—As used in ss. 294, 306, 307, 308, 309 and 310A, *Civil Procedure Code*, "import only the sum offered by the highest bidder and accepted by the Court conducting the sale, and do not include the amount of any incumbrances which the court acting on the best information it has been able to

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obtain, has at the time of the sale notified as existing burdens on the property put up for sale"—*per* Burkitt J. [Stanley C. J. and Blair J. *contra*] in *Inayat Singh v. Izzat-un-nissa Begam*, I. L. R. 27 All. at p. 107.

Purpose—Defined, *Act 3, 1903, S. 2 (n)*.

Purposes of the tenancy—See *Surendra Narain Singh v. Hari Mohan Singh Misser*, I. L. R. 31 Cal. 174.

R.

Railway administration—Defined, *(N. and O. Act 2, 1899 S. 2 (1))*.

Registered—Defined, *N. and O. Act 2, 1901, S. 4 (11)*.

Rent—Defined, *N. and O. Act 3, 1904, S. 2 (4)* As used in *Sch, III Bengal Tenancy Act 8, 1885*, see *Mon. Mohini Dassi v. Perya Nath Besali*, 8 C. W. N. p. 640.

Rent-free grantee—Defined, *N. and O. Act 2, 1901, S. 4 (8)*.

Revenue Court—Defined, *N. and O. Act 2, 1901, S. 2 (13)*.

Revenue officer—Defined, *N. and O. Act 2 1901, S. 4 (13)*.

Revivor—As used in *S. 180, Civil Procedure Code*, see *Umrao Singh v. Lachmi Narain* I. L. R. 26, All. at p. 364.

Right of occupancy—As used in *S. 37 of the Revenue Sale Law (Act 11, 1859)* see *Sarat Chandar Roy Chaudhari v. Asiman Bibi* 8 C. W. N. 601.

Right, title and interest—See *Jotindro Mohan Tagore v. Jugul Kishore*, 9 C. L. R. 59; *Appaji Bapuji v. Keshav Sham Rao* I. L. R. 15 Bom. 13.

Right to do anything in or upon tangible immoveable property—The expression "right to do &c." as used in *S. 147, Criminal Procedure Code (Act 10, 1882)* includes the right of

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fishing—*Dukhi-Mullah v. Halway* I. L. R. 23 Cal. 55; *Kaly Kishen Tagore v. Anand Chander Ibi* at p. 557.

Right to sue—See the observations of Sale J. in—*Sham Chand Giri v. Bhayaram Pande* I. L. R. 22 Cal. at] p. 98—See also I. L. R. 5, Cal. 897.

Rules—Defined, Act 15, 1903, S. 2 (f).

S.

Same transaction—As used in S. 329, *Criminal Procedure Code* see *King Emperor v. Sunder Singh and others* P. R. 1905 No. 3 [Crl. see *Emperor v. Prasanna Kumar Das*, I. L. R. 31 Cal. 1007.

Settled state—Defined, N. and O. Act 2, 1900 S. 2.

Settlement officer—Defined, N. and O. Act 2, 1901 S. 4 (13).

Signature—A thumb-mark affixed to a confession by an accused who is able to write his name is not a “signature” within the meaning of S. 3 (52) of the *General Clauses Act* (10, 1897) or S. 164, *Criminal Procedure Code*—per Henderson and Geidt J. J. in *Sadananda Pal v. Emperor* I. L. R. 32 Cal. 550—See *Sadasook Agarwala v. Barkunta Nath Basunia*, I. L. R. 31 Cal. 1043.

Siwai—Means, in the Revenue language of the Mahammadan times, “other imposts besides the land revenue, for instance taxes on pilgrims, excise, transit and customs duties, taxes tolls &c.” “They also included charges on the use of the products of the jungle (*bankar*), on fishing (*jalkar*) and on orchards and fruit trees (*phalkar*)”—*Baden Powell's Land Systems of British India* Vol. I, p. 420.

Special appeal—Under the old Regulations an appeal from the decree of Principal Sadar Amins lay to the Zilla or city Judge.

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and a further or *special appeal* to the Saddar Dewani Adaulat—
See *Marshman's Civil Guide* p. 825.

Storing—As to what amounts to “storing” within the meaning of S. 394 *Bombay Municipal Act* (3 of 1888) see *Emperor v. Wallace Flour Mill Company I. L. R. 29 Bom. 193.*

Stream—“A stream of water is water which runs in a defined course (*Taylor v. St Helens Corporation L. R. 6 Ch. D. 27*), nor is an intermittent flow a necessary condition to the legal conception of a stream provided the source though irregular, be one of constant recurrence, and not merely fortuitous or temporary”—*per Jenkins C. J. in Secretary of State v. Balwant 5, Bom. L. R. at p 797.*

Street—Defined, *N. and O. Act 1, 1900 S. 3 (4); Act 16, 1903 S. 2 (c).* A street is properly a paved way or road in a city having houses on one or both sides”—*per Jessel M. R. in Taylor v. Corporation of Oldham L. R. 4, Ch. D. at p. 408* followed by Subramania Ayyar and Sankaran Nayer J. J. (in *Venkatarama Cheiti v. Emperor I. L. R 28 Mad. at p. 18*) who held that a drain or ditch on either side of a road way was not part of the street.

Sub-tenant—Defined, *N. and O. Act 2, 1901, S. 4 (7).*

Substantial error or defect of procedure—The decision of a suit on a case which is neither set up by the parties nor warranted by evidence is a “substantial error &c.,” within the meaning of S. 574, *Civil Procedure Code*—*Shivabasava v. Sangappa, I. L. R. 29 Bom. p. 1, P. C.*

Such Court—The term “such court” in S. 243, *Civil Procedure Code*, includes the Court to which a decree has been transmitted for execution—*Guest v. McGregor P. R. 1904 No. 41 at p. 128.*

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Sufficient cause—*Ghulam Shah and others v. Malik Muzaffar Khan*, P. R., 1886, No. 81.

T.

Taluqa—Defined, *N. and O. Act 3*, 1899, S. 3 (3).

Tax—Defined, *Act 16*, 1903, S. 2 (6).

Tenant—Defined, *N. and O. Act 3*, 1904 S. 2 (5); *N. and O. Act 2*, 1901, S. 4 (5).

Tenant at fixed rates—Defined *N. and O. Act 3* 1904, S. 2 (6).

The Court—As used in S. 253, *Civil Procedure Code*, includes the Court by whom the decree may be executed—*per Chanwarkar J. in Lakshmi Shankar v. Raghmal I. L. R. 29 Bom. at p. 33.*

The matter to which the award relates—As used in S. 525, *Civil Procedure Code* “refers to the subject matter of the arbitration and not the matter actually awarded by the arbitrator”—*per Ghose and Pratt J. J. in Nursing Dass v. Ajodhia Prasad Sukul I. L. R. 31 Cal. 203.*

The purchaser—Defined, *Act 30*, 1839, S. 1.

The said territories—Defined, *Act 12*, 1882, S. 3.

Thekadar—Defined, *N. and O. Act 2*, 1901, S. 4 (6).

U.

Ulavadai Mirasdars—See *Seena Pena Reena Seena Mayandi Chettigar v. Chokkalingam Pillay*, 8 C. W. N. p. 545 P. C.

V.

Vendor—As used in Art 136, *Limitation Act* “means a vendor other than the auction-purchaser mentioned in Art 138”—*per*

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Maclean C. J. in *Sati Prasad Sen v. Jogesh Chandra Sen*, 8, C. W. N. at p. 479.

W.

Ward—Defined, *N. and O. Act 3, 1899, S. 3 (5)*.

Written lease—As used in *Cl. (4), S. 49 of Act 8 of 1885*, see *Komar-ud-di v. Sreenath*, 8 C. W. N. 136; *Ludgudi Doctor v. Chandra Kali Sundrani*, 8 C. W. N. 139.

Wrongfully sold—As used in *S. 492, Civil Procedure Code*, see *In the matter of the petition of Chando Bibi*, I. L. R. 26, All. 94.

